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UNSOUNDNESS OF MIND,

IN RELATION TO

CRIMINAL ACTS.

AN ESSAY

TO WHICH

The First Sugden Prize was this year Awarded

BY THE

KING AND QUEEN'S COLLEGE OF PHYSICIANS
IN IRELAND;

BY

JOHN CHARLES BUCKNILL, MD. LOND.,

LICENTIATE OF THE ROYAL COLLEGE OF PHYSICIANS,
FELLOW OF UNIVERSITY COLLEGE, AND FELLOW OF THE ROYAL MEDICAL AND
CHIRURGICAL SOCIETY, LOND.;
AND PHYSICIAN TO THE DEVON COUNTY LUNATIC ASYLUM.

LONDON:
SAMUEL HIGHLEY, 32, FLEET STREET.
1854.

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EXETER:
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TO

The Right Honorable the Lord St. Leonards.

—

My Lord,

The honor your Lordship has conferred in permitting me to dedicate these pages to your Lordship, has greatly enhanced the value of that Prize, which, provided by your Lordship's enlightened liberality, invited the Author to express his opinions on the important subject of this Essay.

Your Lordship, having held successively the GREAT SEAL in England and in Ireland, has been the legal guardian of all insane persons in this Kingdom. Your Lordship has also effected an extensive revision of the statutes, regulating the care and treatment of the insane and the protection of their property. Great, therefore, have been your opportunities of knowing to what extent this helpless and afflicted class has suffered from legislative error and from the shortcomings of science. The spirit of free enquiry, which of late years has been steadily directed to this subject, has been fruitful of the happiest results in the *treatment* of insanity; and it is to be hoped that the same spirit will, ere

long, furnish indications by which that condition may with certainty be recognized: and by which an act, otherwise criminal, may be known without doubt as the result of physical necessity dependent upon disease of the brain.

That your Lordship has encouraged and patronized this spirit must seem to a physician not the least honorable act in your honorable and noble career.

That one of the most distinguished Lawyers of the age should have afforded to a College of Physicians the means of offering Prizes for Essays like the one contained in these pages, affords new ground for the belief that the principles of criminal jurisprudence cannot be deemed irreconcilable with those of physical science. It also affords me a just reason to feel proud of the honor of dedicating to your Lordship this humble effort to promote the agreement of these principles.

I remain,

Your Lordship's most obedient humble Servant,

THE AUTHOR.

Devon County Lunatic Asylum,
October 24th, 1854.

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"He knows a baseness in his blood,
"At such strange war with something good,
"He may not do the thing he would."

AN ESSAY.

—

What is Insanity? what its responsibility? and its negation? what is the relation between the two? Such are the questions propounded by the subject for the Sugden Prize Essay.

Questions they are which have for ages invited the critical and speculative power of physicians, moralists, and jurists, and have eluded the grasp of the most acute and the most erudite minds.

The difficulty of solving these questions has not only been humiliating to the proud intellect of man, but has been attended with great practical inconvenience and with no inconsiderable or unfrequent danger of the exercise of human justice being perverted from the strict line of rectitude; of its being forced to deviate on the one side towards a mischievous and

sentimental sympathy for peculiarities and infirmities of temper, or on the other towards an inflexible administration of penal and vindictive reprisals.

The difficulty inherent in the question appears to depend upon the impossibility of establishing a strict relation between qualities of which the one is infinitely fluctuating and variable, the other is fixed and definite.

Insanity is a condition of the human mind ranging from the slightest aberration from positive health to the wildest incoherence of mania, or the lowest degradations of cretinism. Insanity is a term applied to conditions measurable by all the degrees included between these widely separated poles, and to all the variations which are capable of being produced by partial or total affection of the many faculties into which the mind can be analysed.

There is no quality of anything cognizable to our senses or to our understanding, more variable in its degrees or its combinations than insanity. But legal responsibility is strictly defined. It is bounded by a line, a Rubicon, on one side of which Cæsar is the servant of the state, on the other a traitor and a rebel. It is also uniform, it admits not of degrees of greater or smaller, of more or less. If this uniformity

is unreal and inconsistent with the actualities to be found in nature, and if the boundary line is capable of being moved to and fro, these circumstances will increase the difficulty of making the characteristics of insanity correspond with the common law essence of irresponsibility. It is no doubt of importance that under all possible circumstances the administrators of our laws should have landmarks erected for their guidance; for the smaller the latitude of private opinion which is permitted to the executive, the surer will be the guarantees of liberty and of the impartial administration of justice. Fixed points therefore are rightly decided upon whenever it is possible to do so. Thus the responsibilities of manhood are made to commence at the termination of the three hundred and sixty fifth day of the twenty first year of life, notwithstanding some men grow up to be old boys, and some prematurely wear "old heads upon young shoulders." The plea of infancy protects the child of five and the boy of ten years, as much and not more than the man of twenty; while its exemptions are as completely removed from the man of twenty one, as from the most mature and experienced occupants of manhood's robust age. Forty shillings might as well be fixed upon as the boundary between larceny

and felony as any other sum; and although the moral difference between the man who stole thirty nine shillings to indulge himself in dissipation or in idleness, and he who abstracted forty one shillings to save his children from starvation might be all in favour of the latter, legal distinctions not the less made the first a larcener, the second a felon.

Although these fixed beacons may create a "border land of injustice," they are nevertheless very necessary to steer by, and serve to keep the bark in the proper channel. But of what service would they be, if they could be brought into no certain relation with the circumstances upon which their utility was intended to bear? They would resemble a stationary lighthouse at the entrance of a harbour, the bar of which was composed of shifting sands; which at one time might guide the mariner into safety and at another inveigle him to shipwreck. To make such a beacon useful it must be capable of changing like the dangers it is intended to obviate, it must be adaptable to the variable circumstances of time and place.

To measure degrees of responsibility and adapt them to the variable conditions of disordered mind is a problem, upon the solution of which the whole medico-legal question of

insanity rests. But how can responsibility be measured? Extension in time and place can be measured by duration and by substance; gravitation can be measured by weight, and power of various kinds by its effect on gravitation; even color and such like qualities can be measured by comparison with a standard: but in what practical balance shall the responsibility of man for his actions be estimated? As the weight of a body is measured by the power it overcomes, so degrees of responsibility must be measured by the degrees of mental disorder, and by the amount of inflection they produce from the standard of health.

A man having the knowledge of right and wrong, and in the possession of the power of choosing the one and refusing the other, is rightly held to be responsible for his conduct to his God, to his neighbours, and to himself. A man knowing and capable of discharging his duties to his God, to his neighbours, and to himself, is a sane man. A man who from any mental imperfection or infirmity is incapable of discharging these duties cannot be considered to be in a state of mental sanity, and cannot with justice be held responsible to do that which he is morally unable to do.

It will be hereafter seen, that the neglect of

this distinction between *knowledge* and *power* forms one of the fundamental difficulties of the question.

Having thus indicated the direction of this enquiry, the investigation into the nature and the characteristics of insanity must be commenced. A scientific enquiry into the nature of insanity may at first sight appear superfluous, and of little interest or importance in legal questions. To a practical lawyer, indeed, speculations verging on the domain of metaphysics may possess no attractions and no utility. But the jurist must excavate the foundations of his system as far below the surface as he can reach, and seek, if possible, to place his basement theories upon the solid rock of abstract truth. "Bentham "became an ethical philosopher for the sake of "becoming a jurist," (Mackintosh,) and those who would unravel the relationships of insanity and irresponsibility must be content to exercise some patience in finding the beginning of the threads. All theories of mental disease must be founded upon theories of healthy mental action, as every peculiar system of pathology presupposes and relies upon its corresponding physiology. If it be said, that of opposing systems only one can be true, and that if it is not possible to distinguish the true one, it will

be a worthless expenditure of diligence to gain equal acquaintance with the true and the false; it may be answered, that such theories which bear practical fruits, whether true or false, are worthy of attentive consideration, and that theories of insanity come under this category in an especial manner.

Whether sensationalism or rationalism is the true philosophy of the human mind, or that eclectic combination of the two, which owing to the labors and the genius of Cousin, now holds so high a position in the philosophic world, is a question the scope of which extends beyond the present enquiry. But whether the doctrines of spiritualism or of materialism find favor with psychopathists is of the utmost importance. This is proved when we reflect that the latter doctrines, when followed out to their logical result, can have no weak place by which the actions of men may free themselves from the laws of physical necessity. The materialist is by logical necessity a fatalist. When the teaching of Locke had reached its ultimate developement in that of Cabanis, who maintained "that all "intelligence consists in sensation, and that all "sensation resides in the nerves," the doctrine of fatalism was inevitable, and required no further support or developement from Coombe or Owen.

Fatalism supersedes all idea of responsibility, and the question of sanity or insanity with reference to punishment becomes mere trifling: since to punish any one for actions committed under the inevitable coercion of physical necessity would be unjust, absurd, and brutal. It would be foreign to the purpose of this essay to trace the progress of the sensational philosophy from the first great impulse it received in the "Essay on the Human Understanding," through its change into downright materialism in the writings of Condillac and Cabanis, proceeding onwards in its developement in those of Spurzheim and Coombe, and in the "Vestiges of Creation," to its ultimate expression in the Criminal Jurisprudence of Simpson. It is true that in Germany, rationalism ending in absolute *nihilism* has led to results of the same nature. All strict and coherent systems of metaphysics hitherto propounded appear to have been subjected to the malign fate of terminating, when pursued to their logical results, in conclusions antagonistic to the principles on which religion and society are founded, and at variance with the common sense of mankind. Goëthe, who scorned metaphysics, said, "A "man who speculates is like an animal led "round in a circle by some malignant spirit

"on a dreary heath, while beyond the circle "lies the beautiful pasture."

The eclectic metaphysics, taking as they do from all sides whatever is intelligible and credible concerning the operations of mind, and adapting these materials to each other without any pervading bond of union, can scarcely be considered as a coherent system. To the psychopathic physician whose intelligence revolts against imprisonment within the boundaries of the sensational school, and who cannot coerce his belief within the sterile and narrow limits of the laws of matter, the eclectic doctrines are peculiarly attractive. He cannot withhold recognition from the vast field of operations within which the senses work. His very name and functions mark him as the student and exponent of physical laws. If there is such a thing as disease of the spiritual part of man, he leaves that to the clergy, and only concerns himself about cerebro-mental affections. The brain and its functions are his peculiar province of study, and thus he is urged into close proximity to materialism. But neither his knowledge nor his belief can be restrained within the confines of physical law. Though his main duty may lie within such confines, his enquiries must extend beyond them, or his knowledge of mental dis-

ease will be a thing of shreds and patches. As well might a painter expect to become a great artist by mere copying and color grinding, without intuitive or acquired perception of æsthetic truth, as the physician to acquire accurate notions of cerebro-mental affection by the sole employment of anatomy comparative and pathological, of chemistry, and the microscope. The true psychopathic physician is, and must be, a materialist, but he must also become something more. Unless a one-sided course of study has warped his faculties, and left him an intellectual cripple, he must perceive "that there are more "things in heaven and earth than are dreamt of "in that philosophy." He must believe in an existence not material, or believe that matter was self-created. Recognizing in the hemispherical ganglia of the brain the physical instrument of mental action, he will see that some power must exist capable of putting this in motion, some influence which he may call essence, or spirit, or *anima*, or ψυχη, and the existence of which he is as much compelled to believe, as a man unacquainted with steam power, introduced into the engine-room of a factory where nothing but the effects of power were visible, would be compelled to assume the presence of some hidden and to him unknown

force. Our senses inform us of the existence of matter, our reason assures us of the existence of mind. The mystic union indeed of the two is veiled from our knowledge, and has been well said to present "An adamantine wall against "which the human intellect in vain beats itself." (Whewell.) It is in the attempt to pass this impediment that the main difficulties of psychology occur. We can find no logical bond of connection between the world of matter and that of spirit, and being unable either to bridge over or outflank the chasm which separates them, are compelled to accept the two as distinct though indubitable realities.

Such being the case any theories of mental action which omit either the one or the other of these fundamental realities must be one-sided and vicious. Those indeed who honestly adhere to the double fact, may find their pursuit of abstract truth a tardy process, but whatsoever movement they are able to make will be likely to be progressive. Like parallel lines the conjoined enquiries will serve as a guide to each other; whereas those who leave either one of the two out of their calculations will find their course erratic, turning upon itself, and not progressive. Let it be borne in mind, that from sensationalism and materialism it is impossible

to educe the freedom of the will and the responsibility of man for his actions; and the vast importance of systematic philosophy in the medico-legal question of irresponsibility on account of insanity will at once be seen. A portion of the phrenological and somatic school attempt to deny that their doctrines destroy the freedom and responsibility of man, but this can only be done by carrying the vicious logic a few steps further. Mr. Macaulay observes that, "There is one excellent way of avoiding the "drawing of a false conclusion from a false "major, and that is, by having a false minor; "inaccurate history is an admirable corrective "of unreasonable theory."—(Essay on Gladstone's Church and State.) The converse is equally true. Bad logic may save the credit of false observation; and those who make all mental power solely dependent upon cerebral developement, escape from the results of the hypothesis by shuffling out of the meaning of the word responsibility, and rendering it as if it only implied *liability*. We must refrain from further pursuing this topic, and proceed to consider its immediate bearing upon the theories of insanity.

From the sensational, the rationalistic, and eclectic systems of philosophy, are respectively

developed materialism, spiritualism, and that mixed form of opinion which may not inaptly be expressed as the *cerebro-mental* doctrine.

From these three sources issue three distinctive theories of insanity: namely, the somatic, the psychic, and the somato-psychic. The bearing of each upon the question of responsibility must be traced.

"The somatic theory assumes the operations "of the mind to be an emanation from those of "the body, and considers mental disorders to be "merely bodily ailments."—(Feuchtersleiben.) This theory in a developed form is the one entertained by the phrenologists, and has been expounded in a manner equally candid and exact by Dr. A. Coombe, in his work on mental derangement.

Many find themselves unable to assent to its truth, because for reasons above stated they cannot renounce belief in the separate existence of the soul, because they find insanity both caused and cured by purely psychical influences; and lastly, because necroscopic observations are adverse. In several hundreds of careful dissections of persons dying insane, we have hitherto been unable to discover any cerebral lesions which are not also found in the brains of persons who have died without the

previous occurrence of any mental disorder. This experience coincides with that of Pinel and Esquirol, and of that experienced pathologist Dr. Boyd of the Somerset asylum, and with that of most others who have made this subject their study.

The purely psychical school of insanity has scarcely gained a footing in this country. In Germany it has counted among its advocates some of the most profound writers on mental disease. Heinroth is generally considered the founder of this school. He teaches that insanity is a perversion of the soul, that in fact it is equivalent to sin. The more judicious Ideler, with views fundamentally similar to these, avoids the religious bearing of the question, and prefers to dwell on the ethical relations of insanity. He appears to consider that mental disease possesses the characteristics of immorality rather than those of irreligion; that it is vicious rather than sinful. He "quits the domain of the physician "to make incursions on that of the ethical phi- "losopher, rather on that of the theologian." It will at once be apparent that according to these writers the irresponsibility of no insane person can be insisted upon. The pure somatists are unable to maintain the responsibility of the sane portion of mankind, the pure psychists find the

irresponsibility of the insane an equally untenable position. The extreme opinions on either side lead to conclusions equally opposed to the common verdict of mankind. Fortunately, there is a middle course. The psychosomatists find in the liability of the cerebral instrument to disease, a reasonable basis for the irresponsibility of the insane; and, in the freedom of the spiritual will, a just ground for the responsibility of the sane.

The difficulty which perplexes them is the union of the two states. A concrete case is presented to the observation and judgment. The cerebral disease is observed to be not complete, but partial. It is not in the nature of disease to be complete; it is always partial. So long as the functions of any organ of the body are carried on however imperfectly, that organ cannot be said to suffer from complete disease; and thus cerebral disease must up to the point of death be always partial. Sometimes, indeed, insanity is spoken of as a loss of mind (*amentia*), as one would speak of the loss of a limb. The term however is only to be considered as a metaphorical one, or to imply loss of mental health. Insanity then being a condition of partial change, it is difficult for the psycopathic physician to deduce

from it the result of total irresponsibility. Logically the loss of responsibility must be held to be coextensive with the amount of disease.

On the other hand, freedom of will, the fountain-head of responsibility, is interrupted by the cerebral disease, but not wholly interrupted. If strong motives are addressed to the patient he is capable of controling the manifestations of the malady under which he suffers.

"I am convinced," says Langerman, "that "even in the highest degree of insanity, there "still remains a trace of moral discrimination, "with which we may connect the train of the "patient's ideas." The extent to which the insane are capable of controling their actions is conspicuous in the wards of a well-ordered lunatic asylum. The medical officers of such an institution find some two or three per cent of the patients whom no moral influences appear to touch; but the vast majority are enabled, with a little encouragement and assistance, to control their passions and emotions with nearly as much success as the people out of doors.

Therefore, in the supposed case on which the decision is pending, the physician finds the power of the will weakened, not lost; its freedom impeded and embarrassed, not destroyed. To what extent, therefore, will sound reason

justify him in maintaining the deterioration or total loss of responsibility? To arrive at a perfectly just estimate it would be necessary for him, according to the phraseology of Lord Denman, "to dive into the mind of the patient," and see what is going on below the surface, and in the mud at the bottom. This is not permitted man to do,—God only knows the heart; Omniscience alone can estimate accurately the degree of irresponsibility produced by cerebral disease, the degree of moral freedom and of responsibility left by the same. It is a Gordian knot which no human power can perfectly unravel, and which the most acute forensic intellects have in vain attempted to cut by the sharp line of a legal definition.

In this world, however, neither is absolute truth nor absolute equity attainable. Mankind are compelled to content themselves with an approximation to the former; and to limit themselves to a well-intentioned administration of justice in the rough. If complete freedom were necessary to establish responsibility, who could be found in the possession of it? Certainly no criminal. "Who can venture to say "of himself, 'I am free'? none but the best "of men, and even they should add 'perhaps.' "Who is there, man or woman, young or old,

"who is not subject to passion, to extraneous "impressions? The law cannot here avoid a "certain degree of harshness, from which fate "itself does not exempt us. It punishes even "our unintentional errors, our natural incapa- "city. We must e'en bear the consequences "thence arising, of being what we are." (Feuchtersleiben.) The interests of society demand that men should be held responsible to the law for actions detrimental to those interests: and thus, when the freedom of the will has become embarassed through the intervention of criminal desires, a counteracting motive is supplied in the fear of punishment. Uprightness of conduct getting a one-sided push from the passions would incline to many a lapse if the fear of legal correction did not supply a countervailing prop. If crime is a disease (as some maintain) education may be an effective prophylactic, but punishment is the only cure. It is one, moreover, which, like the cold water cure of an hysterical girl, has a considerable influence in checking a repetition of the attack; and also imposes a beneficial restraint on lookers-on who under an indulgent system might become prone to similar affections. It has often, like other remedies, to be applied in a certain crude and off-hand manner. If physicians never adminis-

tered medicine until they had ascertained with positive accuracy, not only the drug, but the quantity thereof required, no patient would ever be prescribed for. The drug and the dose are suited to the requirements of the patient as closely as medical knowledge can ascertain; it is probable, however, that too much or too little is constantly given.

So also with those who purge the humors of the body social; they do the best they can with imperfect knowledge, and look to general good results rather than to an unattainable exactness. Punishment, however, to be either a remedy or an example, must be administered with some discrimination of the end desired. The petulant child alone beats the table against which it has hurt itself. No person capable of reasoning would imitate the child: he might desire a piece of furniture standing in a position to cause accidents to be removed or destroyed, but the idea of punishment could never be connected with that which had no shadow of moral attributes, no intelligence, and consequently no responsibility. The intelligence, moral attributes, and responsibility of men are perverted or annulled by cerebro-mental disease; and to visit a lunatic with the same punishment for an offence as would be awarded to a sane criminal, would

resemble the castigation inflicted by a child upon an inanimate object, with this difference, that cruelty would be superadded to folly. Whatever may be the effect of punishment as an example to evil doers, or a remedial correction to the offender himself, to be useful in either way it must be *founded in justice.* The same punishment inflicted on an insane or a partially insane, and on a sane offender, can never have this foundation; for the insanity which occasioned the crime may itself have been occasioned by actions of the most virtuous nature, by extremes of duty, religious, paternal, or patriotic. The following quotation from the eloquent Cousin may appropriately close our remarks upon this subject.

"Publicists still seek for the foundation of "penalty. Some who regard themselves as en- "lightened politicians find it in the utility of "punishment for those who witness it, who are "deterred from crime by its threatenings and "its preventive efficacy. This is indeed one of "the effects of punishment, but not its founda- "tion; others through affectation of greater "humanity wish to consider the legitimacy of "punishment as grounded wholly on its utility "to him who endures it, by its corrective ten- "dency: this again is certainly one of the possible

"effects of punishment, but not its foundation;
"for in order that the punishment be corrective,
"it is necessary that it should be submitted to
"as just. We are therefore always compelled to
"return to the idea of justice. Justice is the
"true foundation of punishment; personal and
"social utility is only a consequence. It is an
"undeniable fact, that after every wrong act
"the unjust man thinks, and cannot but think,
"that he is ill-deserving, that is, is worthy of
"punishment. In the intelligence the idea of
"punishment corresponds to that of injustice;
"and when the injustice has been committed in
"the social sphere, the punishment ought to be
"inflicted by society. Society can only do it
"because it ought. The right here has no
"other source than the duty to inflict,—duty
"the most strict, the most evident, and the
"most sacred,—without which this pretended
"right would be nothing but that of force,
"that is to say, an atrocious injustice, even
"though it be to the moral advantage of him
"who received it, and a salutary spectacle for
"the people; which in fact could not then be
"the case, for the punishment would then find
"no sympathy, no echo, neither in the public
"conscience, nor in that of the individual pun-
"ished. *Punishment is not just because it is*

"*useful as a preventive or a corrective: but it* "*is useful in either or both these ways, because it* "*is just.*" (Cousin's Plato, vol. iii. p. 169.)

This theory of punishment, by demonstrating the falseness, the incomplete and exclusive character of the two theories which divide publicists, completes and explains them, and gives to both a centre and legitimate "basis." It is obvious that to be *founded in justice*, the punishment of any offender, of whose perfect sanity a doubt can exist, must have reference to very partial states of mental disease: and that such conditions must be allowed to modify responsibility *quantum valeant.*

Assuming the consideration of the question in its more practical bearings, let us enquire, *What is Insanity?* Is it a condition capable of verbal definition? The ill-success which has hitherto attended endeavours to effect this, would suggest a negative reply. If by a definition is understood, "a brief description of a thing by its properties," the variety and uncertainty of the properties predicable of insanity would render a comprehensive description of them anything but brief, and would in that sense preclude a satisfactory definition. Take for instance, the definition which Guislain, one of the best and most recent authorities, arrives

at through the medium of a painstaking analysis. He concludes, "Thus reducing these elementary "phenomena to a more concrete formula, we "may say that insanity is—a malady chronic, "and apyretic, in which the ideas and the con- "duct are under the empire of an irresistible "power; in which a change has taken place in "the manner of feeling, perceiving, thinking, "and acting; in the attributes of the character, "and in the habits. A state which contrasts "with the sentiments, the thoughts, and the "acts of those around; an affection which ren- "ders him incapable of acting with a view to "his own preservation, to his responsibility, "and his duties to God and society. This de- "finition as I have given it, errs nevertheless by "its diffuseness; it is necessary to condense its "materials more, thus we become able to say: "Alienation is a derangement of the mental "faculties, morbid, apyretic, chronic, which re- "moves from man the power of thinking and "acting freely, with a view to his welfare, his "preservation, and his responsibility."

One might take objection to the predicates, apyretic and chronic, on the ground that the occasional occurrence of febrile and of transitory insanity shew them to be not invariably correct; objection also must be taken to a consequence

of insanity being substituted for a definition. This error, if it be one, appears still more clear from the following sentences added by the author to elucidate his meaning: "Man ceases "to be free. In the absence of liberty consists "all that we find in mental disease; absence of "that which permits us as sane men to live "in accordance with divine and human laws: "absence of a power of ductility, of moral "elasticity, if such an expression is permissible, "absence of the conservative force which res- "ponds to the exigencies of our organization. "It is a state, in one word, of which the cause "is a disease." (Leçons Orales, tom i., p. 66.) M. Guislain shews us plainly enough what insanity is not, but disappoints any expectation which might be entertained of learning from him what it is. He defines the cause of insanity to be disease; the effect of insanity to be loss of moral freedom; but insanity itself, as an actual reality, eludes his grasp. The examination of the numerous other descriptive definitions which have (according to the phrase) been hazarded, would be absolute waste of time, and may therefore be judiciously pretermitted.

A definition may however be given in another sense, as "the explanation of the essence of a

"thing by its kind and difference." When the condition understood by insanity is examined, with a view to such a definition, it will at once be remarked that it is expressed by terms signifying deprivation or subduction. Insanity, alienation, derangement, respectively implying sanity, possession (of mind), order (of mind). The condition, therefore, is essentially a relative one, and must be examined as such.

Dr. Haslam was accustomed to assert, that all men were insane, that the only instance of perfect sanity was the mind of God. He maintained this opinion in place and out of place, for certainly such an opinion must be considered to have been out of place when expressed in the witness box of a court of justice.

Lord Campbell, in the House of Lords in 1853, said, "I know a very distinguished medi-
"cal practitioner, Dr. Haslam, who maintained
"not only that there were many who were
"more or less insane, or that all of us had
"been insane at one period of our lives, but
"that *we all were actually insane.* I have heard
"him say it repeatedly, and he would have
"been ready to prove it."

Dr. Haslam, however, was not alone or original in this notion, poets and philosophers have for ages past amused themselves with it. The

notion that "*semel insanavimus omnes*," appears to have been a pretty general one.

It is thus stated in Rasselas, "If we speak "with rigorous exactness, no human mind is in "its right state. There is no man whose ima- "gination does not sometimes predominate over "his reason, who can regulate his attention "wholly by his will, and whose ideas will come "and go at his command. No man will be "found in whose mind airy notions do not "sometimes tyrannize, and force him to hope "or fear beyond the limits of sober probability. "All power of fancy over reason is a degree of "insanity."

Boileau says,

"Tous les hommes sont fous, et malgre tous
leurs soins,
"Ne different entre eux, que du plus ou du
moins."

Horace hints at it frequently. Cicero discourses upon it.

"Omnes insipientium animi in morbo sunt: "omnes insipientes igitur insaniunt: sanitatem "enim animorum positam in tranquilitate quâ- "dam constantiâque censebant (philosophi); "his rebus mentem vacantem appellarunt in- "sanam, propteria quod in perturbato animo, "sicut in corpore, sanitas esse non possit. Ita-

"que nihil melius, quam quod est in consuetu-
"dine sermonis Latini; cum *exisse ex potestate*
"dicimus eos, qui effrenati feruntur aut libidine
"aut iracundia. Qui igitur *exisse ex potestate*
"dicuntur; idcirco dicuntur, quia non sunt in
"potestate mentis; cui regnum totius animi
"a natura tributum est."

In this place, however, our task is not to discuss what is, or is not, a departure from abstract notions of mental perfection; we have to deal with insanity, not as mere folly or emotion outstepping the bounds of reason, or fancy bounding free with the reins of judgment for a moment relaxed; but with the realities of that prosaic common sense upon which society and its laws are founded. [See Appendix, Note A.]

In this sense, then, what is the condition to which insanity, mental alienation, unsoundness, derangement, is opposed? It is that condition of the mind in which the emotions and the instincts are in such a state of subordination to the will, that the latter can direct and control their manifestations; in which moreover the intellectual faculties are capable of submitting to the will sound reasons for its actions. Such co-ordinate action of the faculties is termed sanity; a condition in which that is lost is

termed insanity, or derangement, or alienation, or unsoundness, all terms having reference to the deprivation of the power of the will so directed.

It is evident that in this definition of sanity there are three terms, the subjected emotions, the directing intellect, and the middle term of free will. Supposing our nature to be fallible throughout its composition, it is evident that erroneous action may originate at any of these points: the mutinous emotions may be indomitable, the power of the will may be abortive, or the intellect may mislead by false guidance. Insanity may thus be Intellectual, Emotional, or Volitional, and though in the concrete it is not easy to find pure and unmixed cases under either of these heads, such cases do occasionally subject themselves to observation. The experienced psychopathist will also find little difficulty in apportioning a vast number of the other cases according to their predominant character, under one or other of these headings.

Insanity therefore may be defined as, A condition of the mind in which a false action of conception or judgment, a defective power of the will, or an uncontrollable violence of the emotions and instincts, have separately or conjointly been produced by disease.

The above definition has the advantage of brevity, and will, we think, be found to include most varieties of mental condition. There are however some few, especially those characterized by defect of the emotional or intellectual functions, as in idiopathic dementia, which it may be thought not to include. Objection also may be taken to it on account of the last words. It may be argued, that long continued indulgence of the emotions and inattention to the intelligent will, is capable of producing insanity without disease. That when slavish submission to the rule of the passions and instincts has become habitual, it also becomes uncontrolable, and therefore that bad habits may constitute insanity without the intervention of cerebro-mental disease. This is a question worthy of a patient and thorough investigation, but one for which the limits of our space prevent us from more than touching upon in this place. The question will, to some extent, turn upon whether vicious habits, however inveterate, are positively uncontrolable. From a long personal experience in the discipline of such natures, we feel ourselves justified in affirming that such is not the case; that the certainty of incurring an amount of pain as a punishment, greater than the amount of pleasure

afforded by indulgence, will effectually keep in check the most inveterate habits of unbridled passion or instinct. [See Appendix, Note B.]

The principles laid down by Beccaria, that punishments should be certain and immediate, and proportioned to the offence, are so thoroughly founded on the principles of human nature, that, when capable of being fully carried into practice, they will keep in effective check the vicious habits of the most unreasoning and instinctive of the human family. It is, moreover, not a little instructive to find, from an excellent work on dog-breaking by Col. Hutcheson, that his maxims founded upon his experience with brutes, (if that term is not a libel upon the four-footed friends of men) tally exactly with those of the philosophic Italian.

For many years much of our own time has been occupied in subduing the vicious habits of persons of weak intellect: these efforts have been attended with a sufficient amount of success to convince us that no amount of emotional or instinctive self-indulgence, however established and confirmed by inveterate habit, can maintain its ground against a corrective discipline, watchful, patient, untiring, and systematic. The corrective discipline of society, systematized into the form of law, "sup-

"plies those motives which strike the senses, "and which are necessary to prevent the des- "potism of each individual from plunging so- "ciety into its former chaos. Such motives "are the punishments established against the "infraction of the laws." Such agencies may well be employed to correct or to cure insanity dependent upon vicious mental habit alone.

Whether insanity can exist founded upon habit alone, without disease, may be left to be determined by future research, and such a condition, like that of drunkenness, must be held to confer but a partial immunity from punishment.

That the insanity of bad habit is the condition of the majority of criminals, was a fact recognized by Sir Matthew Hale; and it is probable that, notwithstanding an habitual indulgence in vicious propensities, the particular offence would seldom have been committed, could the criminal have foreknown with certainty that detection and punishment would follow.

As the element of disease, therefore, is essential to a strict medico-legal definition of insanity, it becomes necessary to enquire in what manner its existence is to be ascertained. Care must be taken at this point to avoid the *argumentum*

in circulam, educing disease from insanity, and insanity from disease. The real test of cerebro-mental, as of physical disease, appears to be a change for the worse from the normal condition of the individual, an appreciable deterioration from the normal state of the functions: a change distinct from developement and from natural decay. The term disease, as generally understood, implies a change from a previous state. We should scarcely call a congenital malformation of any of the organs of an infant a disease, though one born with the small-pox would correctly be said to be diseased from a previous though fœtal state of health. To prove cerebro-mental disease, therefore, the existence of a changed condition must be established; and this can only be done by comparing the individual with his former self. But it may with truth be said, that the character of all men is subject to constant change, without the suspicion of disease; that no man lives through a year of his life without undergoing modifications of opinion and sentiment. The deteriorating change produced by cerebro-mental disease is, however, sufficiently different in its degree and nature from this; and it might as well be said that, because a man's outward appearance is ever undergoing a gradual developement from in-

fancy to manhood, and a gradual decadence from manhood to age, that therefore a physician can never pronounce, from a change in the aspect of any man, that he is the subject of bodily disease. A change therefore, with impairment or perturbation of function, is the chief test of cerebro-mental disease.

It may take the same direction as the original character, and persons naturally timid or daring, cautious or reckless, generous or selfish, may have their natural bias of mind quickly developed in excess. Or the change may reverse the character, and the patient may exhibit a striking contrast to his former self; or it may take some strange direction which no one could guess at beforehand. Nothing can appear more wayward and uncertain than the direction which insanity takes in its developement. Doubtless there are facts and laws, could they be seized upon and subjected to computation, by which, the original character and the disturbing cause being given, the extent and direction of the diseased movement might be predicted; but as yet, if cerebro-mental science is in its infancy, the science of Ethology may be said to be in a fœtal condition; and where such knowledge exists it appears to be the intuitive and incommunicable privilege of genius.

Another test of cerebro-mental disease is the relation between cause and effect, and the operation of remedies. Continuing the parallel illustration of bodily disorder, if a stimulating substance taken into the stomach instead of a feeling of comfortable warmth produced intense pain and vomiting; if to allay these symptoms large doses of opium were given, and large quantities of blood extracted without producing the usual effects of opium and loss of blood in healthy persons; no doubt could be left in the mind of any one capable of reasoning, that a state of bodily disease (gastritis or something else) had been induced. In like manner, if a mental shock of grief or disappointment instead of producing the usual consequences of sorrow or chagrin, has been followed by extravagant and unbounded spirits, and if such excitement, bidding defiance to advice and reason, gives way under the judicious administration of pharmaceutical remedies, and to the influence of that atmosphere of control designated moral treatment; such circumstances will not admit the insinuation of a doubt concerning the existence of disease.

In all obscure cases of medicine the *lædentia et juvantia* become important means of diagnosis. In many cases of mental disease, however, these

indications are little palpable, and their detection will often baffle the acumen of the most astute observer. In criminal trials wherein insanity has been pleaded, it becomes a matter of the most vital importance to ascertain the existence of disease. It is indeed on account of this characteristic of insanity, that the evidence of the physician becomes necessary. Medical men experienced in the phenomena of insanity, are not examined in courts of justice because they may to some extent be mental philosophers and acquainted with the origin of crime, the laws of responsibility, and such matters; but because they are Physicians, and supposed to be capable of detecting the existence of disease.

If the speculations of the school or the closet lead us to the belief that insanity may sometimes occur through the dominating power of a mental habit without the intervention of disease, such opinions will be found foreign to the practical questions to be decided in courts of criminal justice. However interesting it may be to the psychologist to trace the growth of a vicious indulgence in some passion or instinct through all the gradations of mental habit, until he feels himself justified in denominating the result, a state of insanity; he must not forget that in the trials of criminals supposed to be

insane, the question is not alone respecting the existence of insanity, but respecting that of irresponsibility also. The man who would claim for a criminal exemption from punishment on the plea of insanity arising from the vicious and uncontrolled indulgence in some passion or emotion, would have to establish not only the existence of such a form of insanity, but to defend two other positions; namely, that a man is not responsible for conduct resulting from vicious habits of mind, provided the latter gain over him a complete mastery, and compel him, contrary to all dictates of prudence, to actions injurious to society and ruinous to himself. And secondly, that neither the fear nor the infliction of punishment will prove efficacious in preventing the repetition of such acts.

It would be a puerile employment to shew the untenable nature of such positions, and it must suffice to express in this place our conviction, that insanity resulting solely from vicious habits of mind without disease, cannot confer irresponsibility for criminal acts; and that punishment, or more properly speaking corrective discipline, is competent to restrain its mischievous manifestations.

Cicero says, that all fools are insane; and Hale, that all criminals are insane; and when

folly and criminality have reached their climax and borne their fruits, it is not an edifying spectacle to behold the psychological Physician stepping forward for the purpose of claiming immunity for the offender."

The element of disease therefore in abnormal conditions of mind is the touchstone of irresponsibility, and the detection of its existence or non-existence is the peculiar and oftentimes the difficult task of the psychopathist.

Before proceeding to examine the means whereby this task may be accomplished, it will be needful to pass in review those occasional and secondary ingredients of insanity which have at various times been thought to be pathognomonic of the condition. Two methods present themselves for the performance of this duty. The symptoms of insanity may be treated systematically as they affect the intellectual or emotional functions of the mind or the free will itself; or the most striking of them may be examined as they in succession have been made to do service as infallible tests of insanity under the authority of judicial decree.

Fearing that in attempts to seize upon fundamental principles we may too much ignore their practical application to overt acts of insane criminality, we shall adopt the latter course.

Lord Coke made of insane persons four classes, whom he thus described: "1st, An "idiot, who, from his nativity, by a perpetual "infirmity is *non compos;* 2nd, He that by "sickness, grief, or other accident, wholly loseth "his memory and understanding; 3rd, A lu- "natic that hath sometimes his understanding, "and sometimes not, '*aliquando gaudet lucidis* "*intervallis;*' and therefore he is called *non* "*compos mentis,* so long as he hath not under- "standing; 4th, He that by his own vicious act "for a time depriveth himself of his memory "and understanding, as he that is drunken."

The learned and acute Pritchard having observed that idiotcy is usually neither congenital nor complete, remarked respecting this classification of Lord Coke's: "Nor is any place "to be found in either of these departments for "the ordinary cases of insanity, which constitute "the remainder of the instances for which writs "are issued. It is obvious that cases of mad- "ness do not belong to the first class. From "the second, comprehending persons who have "lost their memory and understanding, meaning "those whose faculties have been obliterated by "disease or extreme age, they are equally ex- "cluded. The third class, restricted to madmen "who have lucid intervals, comprehends a very

"small proportion indeed of insane persons; "and the fourth admits only those who have "destroyed their mental faculties by intem- "perance."

"An attempt to enumerate the forms of "mental unsoundness, which excludes by in- "correct definitions nearly all the objects which "it was intended to distribute, could hardly fail "more completely of its design."

The next judicial doctrine taken in chronological order was that made by Sir Matthew Hale, who distinguished insanity as *total* or *partial*, the former alone being permitted to confer irresponsibility for crime. By total madness the Lord Chief Justice appears to have meant frantic mania; and the melancholy records of crime inform us that, under the unfortunate dogma of this great and good man, many insane persons paid the penalty of their lives for offences strictly occasioned by mental disease.

Sir Matthew permitted partial insanity to invalidate civil actions, but refused to it the privilege of palliating or excusing criminal offences; thus affording reason for Georget's indignant remark, "that this judge set a "higher value upon property than upon hu- "man life."

The dictum of Sir Matthew Hale received its refutation at the hands of Mr. Erskine, on the occasion of his celebrated defence of Hadfield for shooting at King George III. in Drury Lane Theatre, in 1800. In reply to the then usual argument of the counsel for the prosecution, that irresponsibility could only be permitted to a person labouring under total deprivation of memory and understanding, Mr. Erskine remarked that, in the literal sense of these expressions, "no such madness had ever "existed in the world." "In all the cases that "have filled Westminster Hall," said he, "with "the most complicated considerations, the lu- "natics and other insane persons, who have "been the subjects of them, have not only "had memory in my sense of the expression, "they have not only had the most perfect "knowledge and recollections of all the rela- "tions they stood in toward others, and of the "acts and circumstances of their lives, but "have in general been remarkable for subtilty "and acuteness. Defects in their reasonings "have seldom been traceable; the disease con- "sisting in the delusive sources of thought, all "their deductions, within the scope of their "malady, being founded on the immovable "assumptions of matters as realities, either

"without any foundation whatever, or so dis-
"torted and disfigured by fancy, as to be
"nearly the same thing as their creation."

The test of delusion was thus for the first time laid down, and, though in itself delusive from its want of comprehensiveness, its temporary establishment did good service by overthrowing and replacing the unfortunate dogma of Hale. Lord Campbell observed that, in the particular case in which Erskine insisted upon the test of delusion, he had nothing to lose by thus narrowing the limits of the issue. And even Mr. Erskine has acknowledged that exceptions occur to his own rule. In the case of a young woman, indicted for the murder of her paramour, and acquitted on the ground of insanity, though it was not pretended that she laboured under any delusion, Mr. Erskine remarked, "It must be a consolation to those
"who prosecuted her, that she was acquitted;
"as she is at this time in a most undoubted
"and deplorable state of insanity; but I must
"confess, if I had been upon the jury who
"tried her, I should have entertained great
"doubts and difficulties; for, although this
"unhappy woman had before exhibited strong
"marks of insanity, arising from grief and
"disappointment, yet she acted upon facts and

"circumstances which *had an existence*, and "which were calculated, upon the ordinary "principles of human action, to produce the "most violent resentment.

"Mr. Errington having just cast her off, "and married another woman, or taken her "under his protection, her jealousy was ex- "cited to such a pitch, as occasionally to "overpower her understanding; but, when "she went to Mr. Errington's house, where "she shot him, she went with the express and "deliberate purpose of shooting him."

In the trial of Bellingham, for shooting the Right Honourable Spencer Percival, which occurred twelve years after the offence of Hadfield, the test of delusion was repudiated by the Attorney General. Sir Vicary Gibbs insisted that, "upon the authority of the first sages in the "country, and upon the authority of the estab- "lished law in all times, which law has never "been questioned, that, although a man may "be incapable of conducting his own affairs, he "may still be answerable for his criminal acts, "if he possess a mind capable of distinguishing "right from wrong." And Lord Mansfield, who tried the case, remarked, "If such a "person were capable *in other respects* of dis- "tinguishing right from wrong, there was no

"excuse for any act of atrocity which he "might commit under this description of de- "rangement."

Bellingham, it must be remembered, was undoubtedly insane, and had various delusions, to the influence of which his crime was clearly attributable. He was tried, condemned, and executed, and his body was on the dissecting-room table within eight days of the commission of the offence. In 1812, postal and travelling arrangements were slow, and sufficient time for the production of witnesses from his native town of Liverpool was refused. The whole affair of Bellingham's trial was a lamentable mistake.

Lord Lyndhurst, in the trial of *the King* v. *Orford*, indicated a disposition to extend the immunities of the insane beyond the limits contended for by Erskine, by directing the jury, "to acquit the prisoner if satisfied that "he did not know, when he committed the act, "what the effect of it, if fatal, would be with "reference to the crime of murder." Under a judicial direction of this nature, if applied in a liberal spirit, it would appear improbable that any insane person could be condemned, for the idea of murder includes that of forethought and malice. Perhaps from it may be dated the

more merciful administration of criminal justice to persons of unsound mind, which, during late years, has prevailed in this country.

It will not be necessary to enter into any refutation of the earlier opinions we have briefly mentioned; the fallacy of them has been shewn by Pritchard, Winslow, and others in this country, by Georget and Ray in France and America; they have fallen into disuse, and have been superseded. To attack them would be to imitate the inebriated hero in Dryden's ode, "And thrice to slay the slain!" The test of delusion forms a part of the authoritative and comprehensive announcement of the law in relation to crime and insanity made by the English judges to the House of Lords after Mc'Naughten's trial, and will require to be considered in connection therewith.

The trial of Mc'Naughten and its consequences form a new era in the criminal jurisprudence of insanity. The history of this person and his offence are too well known to require recital. The present Attorney General, then Mr. Cockburn, defended him with surpassing ability, and placed society in general under an obligation for a truly enlightened exposition of the plea of insanity. The prosecution itself, conducted by Sir Wm. Follett,

presented a remarkable contrast to that of Bellingham.

The circumstances of Mc'Naughten's offence were in most respects strangely similar to those of Bellingham. Both men sought to take away the life of the Premier, although the former made a mistake in the person; both appear to have been driven to the commission of their crime by delusions of a very similar nature; Here, however, the parallel terminates and the contrast begins, Gibbs and Follett, natives of the same place, (Exeter,) differed greatly from each other in character; and the conduct of the latter prosecution was distinguished and honored by that dignified impartiality, becoming a servant of the Crown, and a high public prosecutor, which is not to be discovered in the earlier one; the result in one instance cannot be contemplated without a shudder, or in the other without satisfaction and approval.

The House of Lords, however, appear to have been taken by surprise at the result of the trial, and the bench of Judges was desired to explain the principles upon which insane persons accused of crime were to be considered free from responsibility, and exempt from punishment. To queries propounded by the

House of Peers the Judges in conference enunciated the following dicta as the law of the land on this subject.

"Notwithstanding a party commits a wrong "act while laboring under the idea that he was "redressing a supposed grievance or injury, or "under the impression of obtaining some public "benefit, he is liable to punishment. The jury "ought in all cases to be told, that every man "should be considered of sane mind until the "contrary was clearly proved in evidence. "That before a plea of insanity should be "allowed, undoubted evidence ought to be ad- "duced that the accused was of *diseased mind,* "and that at the time he committed the act, "*he was not conscious of right or wrong.* Every "person was supposed to know what the law "was, and therefore nothing could justify a "wrong act, except it was clearly proved that "the party did not know right from wrong. "If that was not satisfactorily proved, the "accused was liable to punishment. If the "*delusion* under which a person labored were "only *partial,* the party accused was equally "liable with a person of sane mind. If the "accused killed another in self-defence, he "would be entitled to an acquital; but if the "crime were committed for any supposed in-

"jury, he would then be liable to the punish-
"ment awarded by the laws to his crime."

This exposition of the law deserves the most attentive and respectful consideration; inasmuch as it is the deliberate expression of opinion emanating from the highest authority, expressed on the most solemn occasion, and in the most deliberate manner. The form of this opinion, expressed as a series of answers to certain definite queries, makes the whole spirit of it somewhat difficult to understand. The first sentence appears to have no reference to the subject of insanity.

In the third sentence the tests of insanity allowable as a plea against punishment are declared to be *diseased mind*, and *unconsciousness of right and wrong at the time of the offence.*

The sentence respecting delusion is explicit but scarcely intelligible; while the concluding one is extremely obscure. Any man who kills another in self-defence is entitled to an acquittal on a charge of murder. It would seem therefore that in this paragraph there is an ellipsis, and that it should have stood thus: 'if the prisoner killed another *under the delusion* that he was acting in self-defence, he would be entitled to an acquittal.'

The concluding sentence is plain enough,

though it appears to be in direct opposition to the manner in which the law was administered in the very case which rendered this exposition necessary. Judges consenting to this opinion not only presided at the trial of Mc Naughton, but actually stopped the defence, convinced of the prisoner's insanity by the overwhelming weight of medical testimony.

In examining critically the opinion of the judges it will be necessary to separate the two symptoms or consequences of diseased mind upon which they make irresponsibility to depend, namely, unconsciousness of right and wrong, and delusion. The issue is not limited to either one or other of these conditions, neither is there any indication that the former is conceived to be exclusively dependent upon the latter. We will commence therefore by an examination of the weightier question, and endeavour to ascertain how far insane persons who commit offences are conscious of right and wrong; and to what extent the presence of this attribute may justly expose persons of unsound mind to punishment for actions detrimental to society. On this subject we must first briefly appeal to philosophy, and then refer to experience.

Upon what does the knowledge of right and

wrong, or of good and evil (for the judges have used these as convertible terms) depend?

Mr. Locke says, that "conscience is nothing "else but our own opinion or judgment of the "moral rectitude or pravity of our actions."

The judges therefore have placed the test of responsibility upon the normal and healthy action of conscience.

Mr. Locke having cited many instances of enormities practised by whole nations as commendable and virtuous, remarks that, "If we "look abroad and take a view of men as they "are, we shall find that they have remorse in "one place for doing or omitting that, which "others in another place think they merit by." Again, "Good and evil, as hath been shewn, "are nothing but pleasure or pain, or that "which occasions or procures pleasure or pain "to us. Moral good and evil, then, is only the "conformity or disagreement of our voluntary "actions to some law, whereby good or evil is "drawn on us by the will and power of the "law-maker; which good and evil, pleasure or "pain, attending our observance or breach of "the law, by the decree of the law-maker, is "what we call reward and punishment."

Locke then distinguishes three laws or rules, namely, the divine law, the civil law, and the

law of opinion or reputation. "By the relation "they bear to the first of these, men judge "whether their actions are sins or duties; by "the second, whether they be criminal or in- "nocent; and by the third, whether they be "virtues or vices."

Mr. Bentham, whose whole system of jurisprudence is affiliated on the sensational ethics, adopts the same views, and refers the parentage of all knowledge of right and wrong, all actions of conscience, to ideas of utility or inconvenience, of pleasure and pain.

If the opinions of these great authorities are correct in this point, the power of discriminating between right and wrong must ever depend upon the exercise of the intellectual faculties alone, and the alienation of this power of conscience can only be caused by want of intellectual power, experienced either in the faculties of perception, conception, or judgment. When a machine is out of order, it is of course a great advantage to be able to pronounce what parts thereof must be defective; and if the above views are correct, the question of the responsibility of the insane will be much simplified. According to them, if the perceiving and comparing faculties act with sufficient power to indicate the sources of utility

or inconvenience, of pleasure and pain, whatever may be the condition of the emotional or instinctive faculties, criminals possess the knowledge of right and wrong, and are responsible. But the sources of utility and inconvenience, of pleasure and pain, being dependent upon the society in which we live, and the education we may happen to receive, our knowledge of right and wrong might teach us to adopt the custom of fattening and eating our own children, of burning our parents alive, of stealing with courage and adroitness like the youth of Lacedæmon in old times, or of marrying thirty wives like the Mormonite elders in the new. Even in this Christian country, and in this nineteenth century, the pleasures and pains of another life might exercise no influence upon our judgment; because, like thousands of the criminal poor in our great cities, and of our industrial poor in mines, or like that wretched criminal in the following notice, we might never have heard of them. "Conviction for murder. "At the Tyrone Assizes, Mr. Justice Torrens "sentenced Alexander Mullan to be executed "on the 20th of August, for the murder of his "aunt, Jane Mullan, at Kirkpatrick, in May, "1852. His lordship stated that he named the "most distant day his sense of duty permitted,

"in consequence of having learned from the "Gaol Chaplain that the culprit was utterly "ignorant of the principles of the Christian "religion; so much so, as not even to be "aware of the name of the Saviour; and he "earnestly besought him to bestow the time "he had to remain in this world in repentance "and prayer."

In this lamentable case, punishment was deferred, in order that the developement of the knowledge of good and evil might be commenced, even when the power of choice was about to be destroyed for ever.

According to the philosophical opinions prevalent in this country, the knowledge of right and wrong originating from ideas of pleasure and pain is determined in reference to virtue and sin, by Divine law; in reference to innonocence and guilt, by human law. It is with the latter only we are now concerned; and it is obvious, that if the civil law is the measure of crime and innocence, the knowledge of right and wrong is dependent upon the knowledge of the civil law. But the decision of the Judges includes the old dogma, that "every person is "supposed to know what the law is," consequently every person is supposed to possess a knowledge of right and wrong, But, notwith-

standing the legal fiction to the contrary, it is notorious that a vast number of sane persons are ignorant of the civil law; therefore, to the extent which their ignorance reaches, they are unconscious of right or wrong. And the judicial test of insanity is shewn to be an attribute of the uneducated sane, and merely a synonyme for ignorance.

It may properly be objected to this conclusion, that the assumption that "*all* persons "know the *law*" is not a fiction, but a reality, as far as the consequences of great crimes are concerned. But this objection does not invalidate the argument, inasmuch as an equal certainty exists that insane persons committing deliberate crimes have the same knowledge of the legal consequences of these crimes upon themselves; and indeed, in many instances, have perpetrated the most heinous offences for the express purpose of incurring such legal consequences. Hadfield shot at the king in order that he might lose his own life at the hands of the executioner. The Honourable Ross Touchett shot his victim for the same purpose; and similar cases have been numerous. It is highly improbable that any criminal, whose insanity was not so obvious and pronounced as to leave no room for doubt,

and no real necessity for trial, has ever deliberately taken away the life of a fellow creature without the knowledge that, in so doing, he was rendering himself amenable to lose his own life.

The assumption, therefore, that all sane persons are in the above sense conscious of right and wrong, is proved to be illogical and incorrect; and the value of this attribute, as a distinctive mark between the sane and the insane, is entirely lost.

It is due to that great jurist Bentham to state, that, in making responsibility dependent upon the knowledge of right and wrong, and in acknowledging the civil law to be the measure of the latter, he did not adopt the dogma that all men must know the law. On the contrary, his benevolence, as well as his sagacity, pointed out that in this respect society has its duties as well as its rights; and he proposed that every citizen of the state should be compelled to become acquainted, not only with the laws affecting himself in common with all others, but also with the laws having especial reference to his own duties and position in society.

Suppose one of Mr. Catlin's Ojibbeway friends, when in this country, had upon tres-

pass and without a license provided himself with amusement and a dinner, by the destruction of some furred or feathered game; it would have been useless on his part to plead ignorance of the game laws in bar of punishment, for every one is supposed to be acquainted with the laws. It is an undeniable and notorious fact, that a large portion of our indigenous population are as ignorant of law as the red skins themselves can be. When society has done its duty in the education of its lowest members, it will then be time for the officers entrusted with the enforcement of its rules, to insist upon a responsibility founded upon a knowledge which at present is often times unattainable. In the existing state of our populations the dogma under discussion is scarcely more reasonable than it would be to decree, that in this country every one is supposed to have his stomach full of nutritious food at least once a day.

There is, however, another view of the question of responsibility and of the knowledge of right and wrong, approaching infinitely nearer to philosophic truth, than the one founded upon the metaphysics of Mr. Locke or the ethics of Mr. Bentham.

The following lucid explanation of this view

is quoted in the fifth chapter of M. Cousin's analysis.

"The most superficial observation, provided it "be impartial, easily demonstrates, that in the "human mind, in its present actual develope- "ment, there is the idea of right and wrong, "altogether distinct the one from the other. It "is a fact that, in the presence of certain actions, "reason qualifies them as good or bad, just or "unjust. And it is not merely in the select "circle of the enlightened, that reason puts forth "this judgment. There is not a man, ignorant or "instructed, civilised or savage, provided he be a "rational and moral being, who does not exercise "the same judgment. As the principle of cau- "sality errs and rectifies itself in its application "without ceasing to exist, so the distinction "between right and wrong may be incorrectly "applied, may vary in regard to particular ob- "jects, and may become clearer and more correct "in time, without ceasing to be with all men the "same thing at the bottom. It is an universal "conception of reason, and hence it is found in "all languages, those products and faithful ima- "ges of the mind. Not only is this distinction "*universal*, but it is a *necessary* conception. In "vain does the reason after having once received, "attempt to deny it, or to call in question its

"truth. It cannot. One cannot at will regard "the same action as just and unjust. These two "ideas baffle every attempt to commute them, "the one for the other; their objects may change, "but never their nature. Still further: reason "cannot conceive the distinction between right "and wrong, just and unjust, without instantly "conceiving that the one ought to be done and "the other ought not to be done. The con- "ception of right and wrong, instantly gives that "of duty, of law; and as the one is universal "and necessary, the other is equally so. Now "a law necessary for the reason, in respect to "action, is, for a rational but free agent, a sim- "ple obligation, but it is an absolute obligation. "Duty obliges us, though without forcing us; "but at the same time, if we can violate it, we "cannot deny it. Accordingly, even when the "feebleness of the liberty and the ascendancy of "passion, make the action false to the law; "yet reason, independent, asserts the violated "law as an inviolable law, and imposes it still "with supreme authority upon the wayward con- "duct, as its imprescriptable rule. The senti- "ment of reason and of moral obligation which "reason reveals and impresses, is *consciousness* in "its highest degree and office; it is moral con- "sciousness, or conscience properly so called.

"Observe distinctly, however, with what it is "that obligation has to do. It refers to right "doing. It bears upon no other point, but there "it is absolute. It is, then, independent of every "foreign consideration; it has nothing to do with "the facilities or difficulties which its fulfilment "may encounter, nor with the consequences it "may entail, with pleasure or pain, that is, with "happiness or misery, that is again, with any "motive of utility whatever. For pleasure and "pain, happiness and misery, are nothing but "objects of sensibility; while moral good and "moral obligation are conceptions of the reason. "*Utility is but an accident which may or may not* "*be; duty is a principle.*"

If this philosophy is correct, every one possessing the mental attributes of humanity may justly be supposed to be conscious of right and wrong, irrespective of the societies for promoting Christian or useful knowledge, or national systems of education, or Mr. Bentham's proposed instruction in civil law; and so long as the laws are founded upon justice, every member of society, however uneducated or degraded he may be, may justly be held amenable to their penalties.

The sense of duty, the feeling of right and wrong, is an innate principle of the human

mind implanted by the Almighty, and serving as a sure foundation for the responsibility of man for his actions; which is thus not left to chance developement, but is rendered an essential and necessary part of human nature. It seems needful to enquire to what extent this absolute and necessary part of human nature becomes capable of being perverted or destroyed under the influence of cerebro-mental disease. It may be taken as an axiom, that *the innate and essential principles of mind are ever present where mind exists.* It may also be asserted as the result of observation and experience, that in all lunatics, and even in the most degraded idiots, whenever manifestations of any mental action can be educed, the feeling of right and wrong may be proved to exist. The education of idiots and cretins has proved that there is no zero in the human mind; and the success of the *moral treatment* prevailing in lunatic asylums has demonstrated, that insanity does not neutralize the influences by which the moral government of the world is effected. But if insanity does not remove these innate principles, does it on that account leave persons under their influence wholly responsible for their actions? Certainly not: *Responsibility depends upon power, not upon knowledge, still less upon*

feeling. A man is responsible to do that which he can do, not that which he feels or knows it right to do. If a man is reduced under thraldom to passion by disease of the brain, he loses moral freedom and responsibility, although his knowledge of right and wrong may remain intact.

It may be here remarked, that the English judges have made use of the terms, "knowledge of right and wrong," "knowledge of good and evil," "conscious of right and wrong," as if the terms were convertible. This is far from being correct; for that which is morally good, is not always legally right; otherwise legislators would always be infallible, which the contradictory nature of their work at different times proves them not to be. Besides, the innate *consciousness* of right and wrong must be carefully distinguished from the knowledge of right and wrong in a particular instance. Baron Hume, the great Scottish authority on criminal law, avoids this error of confusing the two, and dwells upon the important distinction of knowledge of right and wrong in the abstract and in the particular. He observes, "Whether it "should be added to the description, that he "must have lost all knowledge of good and "evil, right and wrong, is a more delicate

"question, and fit, perhaps, to be resolved "differently, according to the sense in which "it is understood. If it be put in this sense "in a case, for instance, of murder, Did the "panel know that murder was a crime? would "he have answered on the question, that it "was wrong to kill a neighbour? This is "hardly to be reputed a just criterion of such "a state of soundness as ought to make a man "accountable in law for his acts. Because it "may happen to a person to answer in this "way, who is yet so absolutely mad as to have "lost all true observation of facts, all under-"standing of the good or bad intention of those "who are about him, or even the knowledge of "their persons. But if the question is put in "this other and more special sense, as relative "to the act done by the panel, and his under-"standing of the particular situation in which "he conceived himself to stand. Did he at "that moment understand the evil of what he "did? was he impressed with the consciousness "of guilt and fear of punishment? It is "then a pertinent and a material question, but "which cannot to any substantial purpose be "answered, without taking into consideration "the whole circumstances of the situation. "Every judgment in the matter of right and

"wrong supposes a case or state of facts, to "which it applies. And though the panel may "have that vestige of reason which may enable "him to answer in the general, that murder is "a crime, yet if he cannot distinguish his friend "from his enemy, or a benefit from an injury, "but conceived everything about him to be the "reverse of what it really is, and mistook the "illusions of his fancy for realities in respect of "his own condition and that of others, those "remains of intellect are of no use to him "towards the government of his actions, nor in "enabling him to form a judgment on any "particular situation or conjunction of what "is right or wrong with regard to it; if he "does not know the person of his friend or "neighbour, or if he do know him, if he is "possessed with the vain conceit that he is "come there to destroy him, or that he has "already done him the most cruel injuries, and "that all about him are engaged in one foul "conspiracy to abuse him, as well might he "be utterly ignorant of the quality of murder. "Proceeding as it does on a false case or con-"juration of his own fancy, his judgment of "right and wrong, as to any responsibility that "may attach to it, is truly the same as none "at all. It is therefore only in the complete

"and appropriated sense as relative to the par-
"ticular thing done, and the situation of the
"panel's feelings and consciousness on that
"occasion, that this enquiry concerning his
"intelligence of moral good or evil is material,
"and not in any other or larger sense."

With the sentiment of duty, the consciousness of right and wrong unimpaired or even stronger than usual, the insane are frequently unable, in consequence of delusion, to distinguish right from wrong in the particular instance. Thus a poor woman, imbued with the sentiments of piety and maternal affection, suffocated her two children between pillows, because she had been told by the Holy Ghost to do so, in order that they might inherit the kingdom of Heaven. During the many years that this patient was under our care she was docile, industrious, and in every respect well conducted; when alone she held conversations with imaginary beings; in all the ordinary transactions of life, her feeling of right and wrong was precise and sensitive. In the matter of her offence, she believed that she performed a righteous deed; she knew indeed that she was transgressing the laws of men, but what were they, in comparison with the direct mandate of the Most High! The sentiment of duty

was misdirected in its action. Hoffbauer suggests that, "in regard to the acts of insane "persons, the dominant impression in which "their delusion consists ought to be regarded, "not as an error, but as truth; in other terms, "their actions ought to be considered as if they "had been committed under the circumstances "under which the individual believed himself to "act. A soldier at Brieg killed a child, believing "that he saw the Deity at hand, commanding "him to perpetrate the deed. In his judgment "on this case, Dr. Glanwitz ordered that the "man should be confined in a mad-house. If "the imaginary circumstances made no change "as to the imputability of the crime, they "should have no effect on the case under con-"sideration; if they would have lessened or "destroyed culpability, had they existed they "should have the same effect in the supposed "instance."

With other insane offenders, acting under the influence of delusion, the knowledge of right and wrong, even in the particular instance, appears to have remained intact; as in Hadfield's case, who shot at the king for the express purpose of obtaining the punishment of crime. In some instances the idea of criminality is induced by the attempts of insane offenders to

escape or conceal the crime. Dadd, the artist, who committed parricide at Cobham Park, escaped to France. Frost, the insane shoemaker, washed the blood from the hammer with which he had killed his children. Cleptomaniacs also shew their sense of wrong doing, by the stealthy manner in which they perform their thefts, and the care with which they often conceal the booty. In other instances the offence has been the result of the malign emotions, unduly excited by intellectual delusion; as in Mc'Naughten's case, who shot Mr. Drummond because "he "was driven to desperation by (imaginary) per- "secutions."

Not a few of the homicides committed by insane persons are perpetrated without premeditation or thought of consequences. A half-witted man at work on the road side was tormented by a pack of mischievous boys; he struck at one of them with his spade, and split his scull open. If, instead of a spade, he had had only a stick in his hand, the same mental operations would have instigated a blow, but the event would not have been of a tragical nature. The blow was given as a horse would kick a cur yelping at his heels; probably without malevolence, or the feeling that it was wrong. During many years that this patient

has been under our own care, a so-called criminal lunatic, he has displayed a docile and even gentle disposition. Many offences committed by *idiots* are of this nature; many others however indicate the influence of the malign emotions unrestrained by the intelligent will.

The proof of the existence of moral insanity would, of course, entirely destroy the validity of the collective opinion of the judges, or would give us as an alternative, a decision that disease of the brain, producing results detrimental to society, through the medium of one set of cerebral functions, may leave the person suffering from it, liable to punishment; that acting through another set of functions it may confer upon him immunity. The consideration of moral insanity must be postponed.

We claim thus far to have proved, that, according to one great school of philosophy, a large proportion of sane criminals do not know right from wrong; that, according to the other great school, no human beings in the possession of any mental power can be without the consciousness of right and wrong; that the judges use the terms, "knowledge" and "consciousness," indiscriminately; that, many criminals, whose insanity is so obvious that the common sense of mankind would revolt at their punish-

ment, indicate nevertheless a correct knowledge of right and wrong, not only in the abstract, but in the particular instance of their offence. We must therefore conclude that this, the main portion of the judges' condition of exemption from responsibility and punishment on the plea of insanity, is erroneous in principle and inapplicable in practice.

Circumstances, indeed, soon compelled one of the judges to act in open rebellion against its authority. In the trial of Frost for the murder of his children, Mr. Justice Williams said in charging the jury, "*It was not merely "for them to consider whether the prisoner knew "right from wrong, but whether he was at the "time he committed the offence deranged or not.*"

We cannot understand that portion of the judges' opinion wherein they say, "If the *delu-"sion* under which a person laboured were only "*partial*, the party accused was equally liable "with a person of sane mind." A person may have one delusion or many, and his conduct may be more or less affected by delusion; but the idea of a partial delusion is unintelligible, inasmuch as every delusion must be complete in itself.

On the whole, it is probable that the celebrated opinion above examined can do no good

and little harm; for not one of the able men engaged in its construction will be likely to do violence to his good sense or his humanity, by allowing himself to be either restrained or constrained by it, in opposition to trustworthy evidence of undoubted cerebro-mental disease.

The subject of delusion must be furthur pursued. It would appear to be the law that, in order to exempt from punishment, a delusion must be of a nature likely to suggest motives for the criminal act.

This principle, although not without plausibility in theory, is not likely to be of any practical utility. The existence of delusion is the proof of insanity; and an acknowledged lunatic cannot justly be held to be wholly responsible for his actions, whether we are able to trace the motives for them to delusive opinion or not. The insane inmates of asylums occasionally commit homicides under the influence of malignant emotion, of passion, hatred, or revenge; yet they are not held responsible, although the motives of the deed have not arisen from delusive opinion. Not only are delusions frequently concealed, but when known, the connexion between them and the overt act is often extraordinary and scarcely conceivable to a sane mind. We once attended a young gentleman

who had committed a frightful assault upon a child; cutting the calves of its legs through to the bone with a knife! He was in love with windmills, and being placed by his friends in a part of the country where none of these objects existed, he committed the assault in the hope of being removed in consequence therefrom, to some place where windmills did exist.

What sane mind could have guessed the connection between this young man's delusion and his offence?

The case is mentioned in Taylor's Medical Jurisprudence.

The following may serve as a curious example of motive guessing by an experienced psychopathist.

In Mc'Naughten's trial, Sir W. Follett, in cross-examining Dr. Monro, asked,

"May insanity exist with a moral perception "of right and wrong?

"Dr. M. Yes, it is very common.

"Sir W. F. A person may have a delusion "and know murder to be a crime?

"Dr. M. If there existed antecedent symp- "toms I should consider the murder to be an "overt act; the crowning piece of his insanity. "*But if he had stolen a ten pound note it would* "*not have tallied with his delusion.*

"Sir W. F. But suppose he had stolen the "note from one of his persecutors?"

The necessity of connecting the overt act with the delusion cannot be maintained; but the existence of any delusion in the medico-legal sense of the term must be accepted as a proof of diseased mind, and a bar to the punishment due to a sane criminal. *What then is, and what is not a delusion?*

The term applied to ordinary topics is used in two senses, namely, in that of deception, and in that of error and mistake. Its original signification must have been the former of these two, arising as it did from the practice of gladiators to pretend to fight before the real combat commenced; when they made an end of this, they were said *de ludere*, to cease from playing: the term afterwards came to be applied to the mock battle itself, and from thence to any act of deception, especially to deception in opinion. The term however is now more used in the sense of an error or mistake,

"And fondly mourned the dear *delusion* gone."

—*Prior.*

It is in this latter sense that the term is applied to the intellectual errors of the insane. In common parlance, a delusion is either a deception or an error of opinion. The feats of a con-

jurer are delusions as deceptions; but if a person believed in their reality, such belief would be a delusion in the sense of a mistake or intellectual error. In the insane false appearances owing to faulty sense (dysæsthesia) may produce delusions by deception. To these however the term illusion is more properly applied; unless their reality being credited, they are permitted to influence the conduct. When this occurs, the false perceptions from dysæsthesia are not improperly called delusions. The term however is more strictly applied to intellectual errors immediately affecting the judgment Thus a man who perceiving a bad taste in all his food should think that noxious substances were introduced therein, might be said to labor under a deceptive delusion; while a patient who believed himself to be the Deity, or some brute animal, or inanimate substance, would be the subject of a delusion of error.

Sir John Nicholl gave it as his opinion that, "a delusion is a belief of facts which no rational "reason would have believed." This is a very pretty example of "*petitio principii.*"

Lord Brougham defines a delusion as a "belief "of things as realities which exist only in the "imagination of the patient." To this definition

there are two objections, that it includes many erroneous opinions entertained by sane people; and that it excludes many of the delusions of the insane. All delusions founded upon the false perceptions of sense are omitted in this definition; for sensations cannot be said to exist only in the imagination of the patient. They are owing to changes either in the nerves of sense, or in the *sensorium commune;* sensational impressions whether true or false, whether occasioned by contact with the external world, or originating abnormally in the nervous system without such contact, cannot be said to exist only in the imagination of the patient. Delusions founded upon such impressions are common, and their existence destroys the value of the above definition. It is vitiated also by comprehending all the unfounded and absurd beliefs of the sane portion of mankind. Spirit rapping, ghost seeing, clairvoyance, mesmeric prophecy, are all delusions according to Lord Brougham's definition. The worship of Buddha, or of Vishnu, and other false religions, also come under it.

In the common acceptation of the word, no doubt all these opinions are delusions. The medico-legal sense of the term, however, is not the common sense, but is used to imply an

operation of the mind peculiar to insane persons. In this sense we venture to offer the following definition: *A delusion is a belief in the existence of things which have no existence in reality, or an erroneous perception of the nature of things, or of their relation to each other, occasioned by cerebro-mental disease.*

It may be said that this also is begging the question, and leaves the difficulty as great as before. This is to some extent true, but unavoidable. For it must be admitted, that there is no certain method of distinguishing between the erroneous intellectual operations of a diseased mind, and those of the sane but imfect reasoners who abound in society. Insanity is a disease recognizable with sufficient certainty by many symptoms when grouped together, not one of which, however, can safely be trusted to by itself, or considered pathognomonic. Most of the symptoms are occasionally to be observed singly where insanity does not exist. In illustration from another disease: pain in the breast is a symptom of pneumonia, which although it does not always occur in that affection, and does occur in some others, is not without value when taken in connection with other symptoms and signs. In the same manner, an absurd opinion, which taken by itself would possess little value

as an indication of insanity, when considered in a group with other symptoms, may become of great diagnostic value. Thus the belief of the unfortunate parricide, Mr. Dadd, in Osiris and the religion of ancient Egypt, was far more dignified, and scarcely more absurd, than the religion of the Mormons, the Lampeter brethren, the followers of Johanna Southcott, or Swedenborg. It could not therefore on its own merits or demerits be pronounced to be an insane delusion; but when taken in connection with sudden change of habits and disposition; with bodily indisposition, loss of rest, and other indications of nervous disturbance; and followed by the homicide of a beloved parent, that strange opinion is at once recognised as the fantasy of a diseased brain.

Not unfrequently, but by no means constantly, the delusions of the insane possess characteristic features, by which they may be distinguished from the absurd opinions of the foolish and ignorant. The following are some of the most prominent.

1st. The delusions of the insane are generally independent of the opinions of others; they isolate the person who entertains them from his kind: whereas the sane portion of mankind are gregarious in their absurdities; fools who

are to be considered sane, follow each other through a gap like a flock of sheep; oftentimes indeed following some bell wether who is more rogue than fool; they have neither the confidence nor the courage to walk alone. Mr. Dadd was probably the only person in England who believed in Osiris; had there been a few hundreds or even a few scores of persons entertaining the same belief, his ideas on this subject would have been of infinitely less value as a symptom of insanity.

2nd. The faith of the insane in the truth of their delusive opinions is stedfast and unflinching. It almost surpasses the religious faith of the Mahomedan or Hindoo, and renders pale by contrast the attenuated belief which sane men accord to the absurdities of the hour. The dilettanti philosopher or religionist concedes to clairvoyance, to rapping spirits, or to Mr. Prince, a certain amount of belief, which may give way under the assault of ridicule, or logic, or misfortune; but the lunatic believes in his delusion with all his soul; he may outlive it or be cured of it, but can never be driven from it by any influences, however potent; "no one who has "not been insane," says a convalescent patient, "can imagine how terribly real the delusions of "lunatics are." [See Appendix, Note C.]

3rd. The delusions of the insane come on after some physical or moral shock, and often present strange contrasts to the previous habits of thought, or have no relation thereto. The absurdities of the foolish or the ignorant have no such starting point, and are generally consistent with their customary attempts at thinking.

4th. The delusions of the insane in many instances have relation to the patients alone, and are often of a kind which renders their nature apparent; no one could for an instant doubt that a man was insane who conceived himself turned into the screw of a cider-press, and for months revolved on his own axis, making a creaking noise with his mouth. The idea of loss of personal identity in an infinite variety of ways is a frequent source of delusion, and indicates so complete an overthrow of the normal action of the mind, that it must generally be considered the result of disease. Even where such delusion is to a certain extent endemic, and therefore loses its isolated character, as in the '*loup garous*' of France it is found to be caused by disease.

These characteristics of insane delusions are not constant. In a great number of instances they afford a clue to the formation of a right judgment, but not unfrequently they are al-

together wanting. In such doubtful and difficult cases the psycopathist can only form his opinion by a careful estimate of all concomitant circumstances.

The true test of delusion as a symptom of insanity is its origin or mode of production. Its existence corroborates the testimony of various physical and rational symptoms of cerebro-mental disease, and its own nature is discovered by their existence: they mutually prove each other. No mental test, therefore, of insanity being trustworthy, it becomes of the utmost importance to ascertain what rational symptoms and physical signs taken in combination and ratifying each other, are sufficient to place beyond doubt the existence of cerebro-mental disease.

It must be acknowledged, that the recognition of cerebro-mental disease is often encompassed with difficulties, not to be surmounted except by the most patient, as well as the most skilful and experienced observation. There are many bodily diseases, the recognition of which is attended with similar though not with equal difficulties. The organ of mind being enclosed within its bony case, impenetrable to our senses, and performing its functions without any outward manifestations, except the result of those functions in speech and action; phy-

sical signs of its disease are almost unattainable. There can be no cranioscope to give information of the operations in the higher bodily cavity, corresponding with the instrument which has of late years made us so well acquainted with those in the cavity of the chest.

It would be superfluous to introduce in this place a lecture on the symptoms of insanity as they affect the various bodily functions, and especially the eye, aspect, and demeanour of the patient; and it must suffice to mention that in most instances they enable the experienced physician to recognize without difficulty the existence of cerebro-mental disease. *The aspects of disease* are so peculiar that oftentimes they alone enable the practised eye to distinguish patients suffering from numerous bodily disorders for instance, from affections of the kidney, or of the heart or lungs, or from malignant growth. It is not therefore surprising that cerebro-mental disease which impresses its sign upon every look, feature, and movement, should be easily recognized by its aspect. This power of recognition becomes by experience a tact not easily communicable in words, but sufficiently certain in practice.

Like the power of the skilful advocate over witnesses and jurymen; like that of the In-

tainty pursuing his way through woods; it is gained by long and actice only, and is not altogether even by the possessor of it. Du- present summer a physician visiting a Lunatic Asylum, observed a group of or thirty female patients dressed in the costume; and at the distance of a gun from the aspect and carriage of one of se women he pronounced her to be of sane nd, and was informed by the Medical Super- tendent that she indeed had already received her discharge as cured. The assertion of this power in a court of justice would scarcely be admitted, and the physician would be required to explain his process of deduction. He would have to trace the effect of hereditary predisposition, and of a sufficient exciting cause, to detail the particulars of change which had taken place from the standard afforded by the patient's normal and healthy condition; change in the affections or in the modes of thought; change in the eye, the countenance, and the demeanour; the presence of restlessness and sleeplessness, of altered temperature, vitiated secretions, and resistance to the power of medicines. With sufficient opportunities for making observations on all points, experienced and skilful physicians

would be able to form opinions thoroughly trustworthy in all but the most rare and exceptional cases. Unfortunately it has not been the practice in this country to afford such opportunities. The physician has been compelled to form his opinion from two or three brief conversations held in the prison cell, during which, if the prisoner is really insane and be on his guard, he will endeavour to conceal his insanity, or if feigning, will act the part to the best of his ability. In America and France these matters are conducted differently, and an alteration in the practice of this country is urgently needed. Under the present system an offender supposed to be insane is consigned to the common gaol. If the next sitting of the Criminal Court be near, no sufficient opportunity for the observation of the prisoner can be obtained; if on the other hand the Court does not sit until some time after the committal, and the patient is suffering from recent insanity, the invaluable opportunity of early treatment is lost; and by thus rendering the patient liable to have his malady confirmed and rendered permanent, the most unjust and fearful punishment may be inflicted upon him. The most obvious and wise course would be, to consign without delay all offenders supposed

to be insane to the custody and treatment of public medical officers, who should examine thoroughly and ascertain the mental condition of their charge, and report thereupon as witnesses or experts.

The collective opinion of the judges has thus been subjected to detailed examination; and in the specification of *disease of the mind* it has been found to contain the real test of irresponsibility from insanity; although this truth might almost be overlooked from being conjoined with, and obscured by, the metaphysical and impractical subtilties concerning partial delusion and consciousness of right and wrong.

We have seen that the authority of this opinion was very soon neglected in practice by Mr. Justice Williams; and Lord Campbell, in a debate in the House of Lords, after alluding to his "very long experience and very "large attention to this subject," said, "he "had looked into all the cases that had oc- "curred since Arnold's trial in 1723, and to "the directions of the judges in the cases of "Lord Ferrers, Bellingham, Mc'Naughten, "Oxford, and Francis, *and he must be allowed* "*to say, that there was a wide difference, both* "*in meaning and in words, in their description*

"*of the law.*"—(Hansard's *Parliamentary Debates*, vol. lxvii.)

Monomania, homicidal mania, moral insanity, "*mania sans delire*," has sorely tested the patience of English judges, and the understanding of the English public. In Burton's trial, at the Huntingdon Summer Assizes, 1848, Baron Parke spoke of the doctrine of moral insanity as "a dangerous innovation coming in with the present century." Our task, however, will not be to enquire whether the theory of moral insanity without delusion is dangerous or new, but whether it is true, and founded upon well observed and well authenticated facts.

The doctrine has, to some extent, suffered both from bad terminology and from bad logic on the part of its advocates; and especially from its having been considered separately from the necessary and essential requisite of irresponsibility, *a state of disease.* The doctrine which derives responsibility from the knowledge of right and wrong, and the knowledge of law, necessarily fixes our attention on the condition of the intellectual faculties alone. But neither the observations of fact, nor probabilities educed from the nature of the thing, in the slightest degree indicate that this portion of the mind is exclusively liable to pass into a diseased con-

dition. On the contrary, a sound philosophy points to the emotive part of our nature, as the common, if not the only source of mental disease. [See Articles on the *Law and Theory of Insanity*, by the Author, in the *British and Foreign Medical Review*, vols. xxiv., xxv.]

M. Esquirol's admirable monograph on the subject of homicidal insanity is worthy of the most attentive study. He divides insane homicides into three classes:

1st. Those who are moved to a desire to kill by motives more or less chimerical and contrary to reason; who are recognized as insane by all men.

2nd. Those who have no known motives, imaginary or real; who are compelled to the commission of the act by a blind impulse, which they resist and endeavour to escape from.

3rd. Those in whom the impulse is sudden, instantaneous, unreflected on, and stronger than the will; the murder is commonly committed without interest or motive, and often upon the most loved objects of the affections.

The first class requires no further observation in this place; and the existence of the third class, in which the impulse is sudden and unreflected on, admits of grave doubt. The testimony in favour of the existence of such a

variety is very scanty and unsatisfactory: and it is improbable that cerebro-mental disease can develope itself in so rapid a manner. It is probable that the cases of insanity, which have been placed under this head, were less recent and sudden than they were supposed to be. The earlier stages of diseased feeling had been unobserved by others, and unacknowledged by the patient. The case of the irascible gentleman with disease of the liver, recorded in page 800 of Mr. Taylor's work, can in no way be perverted into one of insanity; for, unfortunately, many men have a sudden impulse to beat their wives with a poker. Had this person given way to his impulse, would he not richly have deserved punishment?

The use of the term 'impulse' in these discussions has been particularly unfortunate. [See Appendix, Note D.] It conveys the idea of force communicated instantaneously, a rapid motive; whereas the morbid desires under consideration are not of instantaneous production, or of rapid growth. They arise from a chronic disease, and are resisted up to a certain point; sometimes they are altogether and successfully resisted; sometimes, unhappily, they prove too strong for the power of the will. In order to establish this form of insanity, the existence of

a diseased emotion must be proved. The will itself is a faculty so simple and undecomposable, that it may well be doubted whether it can ever lapse into a diseased condition. It may indeed be weaker than natural; while, to keep in subjection emotions strong and rebellious through the operation of disease, it had need be stronger, otherwise it must give way. Esquirol, however, speaks of *lesion de volunté*, and says: "Si l' in-"telligence peut être pervertie ou abolie; s' il "en est de même de la sensibilité morale "pourquoi la volunté, *ce complément de l' être* "*intellectual et moral*, ne serait-elle pas pervertie "ou anéantie? Est-ce que la volunté, comme "l' entendement et les affections, n' éprouve pas "des vicissitudes, suivant mille circonstances de "la vie?"

It would be well if the term insane *impulse* could at once be banished from medico-legal discussions. The adjective in common use, *uncontrollable*, is also liable to serious objection. Whether an emotion is uncontrollable or not, depends upon its relative strength to that of the will; and Lord Denman's remark in the trial of Martha Prior, at Chelmsford, March, 1848, was not altogether an unreasonable one: "That "one person could not dive into the mind of "another, and express an opinion with regard

"to its being in an unsound state, when there "was no evidence of any alteration of conduct, "or any circumstances in the case to shew "alienation of mind." Unfortunately, however, for the necessity of this remark, there were such circumstances in this particular case. The woman, recently confined, was found by her medical attendant in "a dangerous state, with "complete prostration of strength, her eyes "were vacant and wild, her countenance hag-"gard;" and, believing her mind to be affected, he gave orders that her child should not be given to her; that she was to be kept quiet, and not permitted to be alone. He attributed the crime to *uncontrollable impulse*, though he had himself watched the developement of the emotional disorder. The term was inapplicable and unfortunate. It may be truly said that every crime is the result of uncontrollable emotions; that is, of passion or desire stronger under the circumstances than the intelligent will. Besides, even the subjects of moral insanity do, in many instances, control their emotions for a time, and refuse to obey their first suggestions: the fear of correction affording external aid to the will, oftentimes enables both the sane and the insane to control their emotions. We have known a patient, the

subject of cleptomania, entirely cured of his thievish propensities, simply by having his pockets turned inside out every night and morning. The shame and certainty of periodical exposure and loss of booty were sufficient to enable him to control his diseased appetency for the property of other people.

The real question is, not whether the emotions occasioning the overt act are beyond the power of the individual to control, but whether they are the result of disease. If the objectionable terms, *impulse* and *uncontrollable*, are disused, the simple and intelligible question of the existence or non-existence of disease will take its rightful and prominent place.

Esquirol relates from Gall the following good example of homicidal monomania without delusion: "I know a young woman, twenty-six "years of age, at present in good health, who "has been affected with homicidal madness. "She felt, at the catamenial periods, inex- "pressible anguish, the temptation to destroy "herself, and to kill her husband and her "children, who were infinitely dear to her: "for a long time she had not the courage to "bathe the youngest of her children, because "an inward voice said to her without ceasing, "'Let it drop; let it drop!' She had often

"scarcely the power, or the time, to throw "away from her the knife she had taken up "in order to plunge into her own bosom and "those of her children. If she entered the "chamber of her husband and children, and "found them asleep, the idea of killing them "instantly seized upon her; sometimes she "precipitately closed the chamber upon them, "and threw the key to a distance, in order to "prevent the possibility of re-entering."

The case of Baron Humboldt's servant, related by Marc, is well known. The following cases are also from Marc:

"A young married woman, who had placed "herself in a *maison de santé*, experienced ho- "micidal desires, of which she was unable to "indicate the motives. Her reason was un- "affected on any point, and every time she "felt this lamentable propensity recurring and "strengthening itself she shed tears, and en- "treated that the strait-waistcoat might be put "on her, that she might be well restrained until "the attack, which sometimes lasted several "days, had passed away."

"A distinguished chemist, who was also an "agreeable poet and had a naturally sweet and "sociable temper, came to a *maison de santé*, "in the faubourg Saint Antoine. Tormented

" with a desire to commit murder, he prostrated
" himself before the altars of Churches, and im-
" plored the Almighty to deliver him from so sin-
" ful and atrocious a desire, of the origin of which
" he was unable to give any account. When
" he felt his free will was about to submit itself
" to this sinful desire, he ran to the chief of
" the establishment and made him tie his thumbs
" together with a ribbon. This frail ligature
" sufficed to calm the unhappy man; who, how-
" ever, at last attempted to murder one of his
" attendants, and died in an accession of furious
" mania."—(Esquirol, tom ii., p. 808.)

The following parallel case came under our own observation. An agricultural laborer, of steady and industrious habits, had thought, talked, and read much on religious subjects; two years before his admission into the asylum he left the Church of England and joined the Independents; . twelve months after that he became restless, gloomy, and reserved, irregular at his labors, and distressed about his soul. He was fully conscious of his state, and had great hopes of being cured in the asylum. He had shewn no outward disposition to suicide or violence, but *had the constant feeling that he must destroy some one.* None of his relations had been insane. On admission he was twenty-

six years of age, a fine powerful man, six feet high, with more than the average intelligence of his class. He was aware that his mind was affected, and said, "that his head was filled with "vain and evil thoughts, and that the more he "strove to get near the Scriptures, the further "he was from them; he felt a strong desire to "commit murder, which he struggled against, "and thought a temptation from the devil." His head was hot, and he had some pain in it; but was otherwise in good health. In the course of a month he improved greatly, but relapsed after a visit from his friends: he however again improved, lost all his bad thoughts, and for some weeks labored at spade-husbandry. Whilst thus engaged he one day came to the physician, and begged to be taken from the garden and placed in a safe ward, as he had experienced the strongest desire to kill some of the patients with his spade. His request was complied with, and from this time he never again lost the homicidal feeling. To avoid the murderous assault to which he felt himself urged, he often requested to be locked in his bedroom, and still more frequently tied his own hands together with a piece of pack-thread, which he could have snapped with the greatest facility, but which he said enabled him to resist the tempta-

tion; he was sad and morose, but never displayed the slightest violence. Six months after his admission he was attacked with pneumonia, first of one lung, and then of the other. Partial softening took place, followed by hœmorrhage, of which he died. On post-mortem examination the membranes of the brain and the brain itself bore evident traces of disordered nutrition; the arachnoid was thick and opaque, and the cerebral convolutions at the vertex were atrophied.

At the present time we have under treatment a woman, forty-five years of age, who twelve months since cut the throat of her child with a shoemaker's knife; fortunately the cut, though deep and wide, was external to the great vessels, and the child recovered. The woman was immediately placed in the asylum. She had symptoms of a typhoid nature, her pulse was rapid, small, and compressible, her tongue brown and dry, her teeth covered with sordes, her countenance pale and anxious; she refused food, was sleepless, and could with difficulty be kept in bed. She was greatly distressed on account of her criminal act, but was consoled when after a few days she learned that the child was likely to recover. Twenty-two years ago she had an attack of puerperal mania, but had quite recovered, and had conducted herself

with great propriety and respectability ever since. The exciting cause of the recent attack appears to have been a disagreement with an aunt, and the ill conduct of her husband. *She had no delusion*, and greatly lamented the injury she had done to her child: she said a constant desire to take the child's life preyed upon her, without her knowing why, as she loved the child tenderly. She gradually recovered, and after eight or nine months of complete convalescence, was discharged as cured on the 6th of September last. She was re-admitted on the 16th, with all her old symptoms, mental and bodily, although the latter were of a more sthenic character: her mind had been upset by returning to her old residence, and she had for many days felt the most intense desire to destroy herself or some one else. For the first week after her return, she entreated to be allowed to remain in seclusion, to avoid suicide or something worse. She got no sleep without strong doses of morphia. Under active medical treatment she is already (October 11th) much better, and is beginning to employ herself in domestic occupations.

We shall not lengthen this essay by quoting the numerous trials on record in this and other countries, where the plea of homicidal

insanity has been set up, sometimes with, sometimes without, the acquittal of the prisoner. The most prominent of these are clearly, but succinctly, referred to in Mr. Taylor's excellent work on *Medical Jurisprudence.* Mr. Taylor remarks truly enough, that the establishment or rejection of this plea has been too much a matter of chance, or too much dependent upon the skill displayed in its advocacy, and the amount of public attention directed to the case.

Comparing the cases of Touchet with that of Lawrence, the former of whom was acquitted, the latter executed, he says, "What distinction "can possibly be made by physician or jurist "between these two cases; or how is it possible "to lay down rules for the future guidance of "medical witnesses under such capricious deci-"sions? The acquittal of Touchet may have "been perfectly right; but then the conviction "and execution of Lawrence was a public "wrong.

"The principles of the English law have been "closely scrutinized by medico-legal writers, "and it has been abundantly proved, that the "test of responsibility assumed by it, is of a "purely theoretical kind, and cannot be carried "into practice. With this admission it appears "to me unnecessary to occupy space with meta-

"physical discussions regarding criminal respon-
"sibility; for however defective the rules, if
"the *practice* of the law be in any one case in
"conformity with that which has been advised
"by the best writers on the medical jurispru-
"dence of insanity, this is all with which we
"have to concern ourselves: the principle is
"admitted. The great defect in the English
"law is, not that it will not go to the full
"extent of the doctrine, but the *uncertainty of*
"*its application.* The foregoing cases shew, that
"an acquittal on the plea of insanity is left to
"be a mere matter of accident."—p. 803.

He then compares the cases of Brixey, (Central Criminal Court, June, 1845,) who killed her master's child, with that of Burton, (Huntingdon Summer Assizes, 1848,) who destroyed his wife and child; the former of whom was acquitted, the latter left for execution; remarking, that the most strenuous advocate of irresponsibility can desire no better a precedent than the acquittal of the former.

Mr. Taylor does not, however, appear to have been acquainted with the termination of Burton's case. Upon the charge of Baron Parke, who insisted upon the old delusion and consciousness of right and wrong test, and declared his concurrence with Baron Rolfe's expression

of alarm "at the admission of irresponsible "impulse as an excuse for crime," this poor man was found guilty of the murder of his wife, and left for execution. Owing, however, to the strenuous exertions of the medical men of Huntingdon, he was reprieved. He remained in the Huntingdon gaol nine months; during which time he was taciturn and listless, "his memory failed him, and his conduct was "that of a child."—(Gaoler's note.) He several times attempted suicide. In April, 1849, he was tried upon a second indictment, for the murder of his child; the first having been for the murder of his wife. The double murder had been committed at the same time. In this second trial, he was acquitted on the ground of insanity. He was then removed to the Bedford Lunatic Asylum, where he remained in much the same condition for a few months, and then died suddenly.

The reports of French and American trials of this kind are far more instructive than any we possess, of those which have occurred in our own country; owing to the greater facilities given to physicians in those countries, for the formation and exposition of their opinions.

In the number of the *Annales Medico Psychologiques* for January last, will be found the de-

tailed reports of medical experts on two cases of criminal insanity: namely, that of Dominique Miller, accused of assassination, reported by M. Aubenal of Marseilles; and the other, that of François Rolland, for an attempt on the life of his wife, by MM. Launurier and Delaunégrie.

The former especially is an admirable example of accurate and painstaking investigation. The latter portion of the condensed analysis with which he concludes his report, has so general a reference, that it deserves quotation.

After finding that the accused was subject to hallucinations and illusions, which made him mistake a poor old man for the Mexican Consul, who was always appearing to his disordered senses; he says,

"5th. The accused did not enjoy the integrity "of his intellectual faculties, and his free will "was manifestly altered when he perpetrated "the assassination.

"6th. He cannot be considered responsible for "this act of assassination: *the act of killing is not "a crime in itself; it is the motive by which the "agent is actuated which renders it culpable, and "liable to all the severity of the law.*

"7th, 8th, 9th, and 10th. The insanity of "the accused still exists, and is indeed in- "creasing; he is exceedingly dangerous, and

"it will be necessary for the judicial authorities "to order his confinement and rigorous surveil- "lance: this confinement in an asylum should "be perpetual, since the remissions of his disease "will not indicate a cure. *The insane homicide* "*ought not to perish upon the scaffold, but society* "*has a right to guarantee itself from danger by* "*his permanent sequestration.* If ever he should "claim his liberty, the judicature should refuse "it; or at least, order beforehand a scrupulous "investigation as to his state of mind, conducted "by experienced magistrates, and physicians "devoted to mental science."

The report on Roland, elicits from the able editor of the *Annales*, M. Brierre de Boismont, some valuable remarks. He expresses his conviction that homicidal monomania has received, "une extension trop considerable:" that it is evident, that homicides committed by the insane, should be referred to different motives; and that they should be analysed more rigorously than has yet been done. He objects to the advice of his colleagues, that Roland after apparent cure should be set at liberty; and cites the testimony of Pinel respecting an inmate of the Bicêtre, who, sixteen years after strangling his children, contrived to assassinate two of his fellow-patients.

He recommends a special asylum for the detention of those insane persons who have committed murder or are peculiarly dangerous.

The Americal Journal of Insanity for October, 1852, contains a most interesting and detailed report on the trial of Charles Furbush, for the murder of John Pindy, at Lynn, U. S. June, 1851, by shooting him with pistols. The most peculiar circumstance connected with this case was, that the murderer placed a pistol bullet in his own ear, and inflicted a superficial cut on his neck with a knife. These things he explained at one time as the results of a duel in which Pindy had fallen; at another, as owing to attempts at suicide. Although insane, he appears to have been by no means, "insons criminis." He was acquitted on the plea of insanity.

The same journal for January 1852, contains the particulars of the trial of Margaret Gerraty, who was tried at Newark, New Jersey, for the assassination, with a carving knife, of a young man who had seduced her, and afterwards married another woman.

This trial presents a remarkable instance of perversion of the plea by the jury; in order to avoid the condemnation and execution of an ill used woman. The jury were sixty-two

hours in deliberation; their verdict, of "Not guilty on the ground of insanity," was greeted with applause in the court house, and with universal congratulation and rejoicing in the city.

The celebrated Hampshire verdict, "Served him right," would perhaps have been more consistent, if not with the facts of the case, at least with the temper of the public. After the trial, the Court appointed a commission consisting of six physicians, to examine her case, and decide whether she should be sent to the asylum, or set at liberty. They unanimously reported, that after careful investigation they found existing no evidences of unsound mind.

We do not give the indications derived from the nature and circumstances of the offence itself, by which, according to Esquirol, insane homicides may be distinguished from murder, because they all appear to be fallacious. Experience has shewn, that any one or all of them may be absent where there is undoubted insanity; and that any one or all of them may be present where the supposition of mental disease is quite untenable.

A careful study of recorded cases, leads to the suggestion of the following improvement on Esquirol and Marc's classification of homicides by the insane.

1st. Those wherein the crime has been occasioned by delusion, and no reasonable person can doubt or object to the irresponsibility of the offender.

2nd. Wherein the offender, through suffering from mental disease, has committed the crime under the influence of some motive not of a delusive character.

This class will include such cases as those of Lawrence, Touchet, Hadfield, and others, where a person desiring to lose his own life at the hands of the executioner, commits a homicide with suicidal intent. Also those of Greensmith, Staniought, Burton, and others, who have destroyed their wives and children, after real or supposed pecuniary losses, in order to remove the beloved objects of their affections from the sufferings of poverty. This class will also include the most embarassing cases which can be presented to a jury; wherein, with evidence of pre-existing insanity, a motive for the crime is to be found in some of the malign emotions; as in the case above cited from Mr. Erskine's speeches; the case of R. v. Farmer, York, 1837; R. v. Goule, Durham, 1845; the still more remarkable case of William Quinlaw, mentioned in the fifth report of H. M. Inspectors of Asylums in Ireland, p. 12.

In these cases, the responsibility may be diminished or modified, but the most extended sympathy for the insane could scarcely claim for them, that it should be altogether abrogated.

3rd. Where with general symptoms of cerebro-mental disease, neither delusion, nor motive for the crime, are discoverable.

These latter are the cases which with a most unlucky phraseology have been attributed to *moral insanity*, insane impulse, uncontrollable impulse, homicidal impulse, &c. These are the cases in which according to Marc, "Le mono-"maniaque homicide est entrainé par un instinct "aveugle, par quelque chose d'indèfinissible que "le pousse à tuer." Such a case as the one of the girl Brixey above referred to, from Taylor, and still more perhaps, that of the poor woman, Martha Prior, who in December, 1848, thirteen days after her confinement, cut her infant's throat with a razor. She had puerperal mania, but confessed the crime to have been a premeditated act.

Instances enough have been cited to prove the existence of homicidal insanity without delusion. It is true that in most of these the power of the will, aided by the moral restraint imposed by residence in asylums, was sufficient

to prevent any criminal act; and persons of severe temper and virtue may argue, that in all other cases, the want of such victorious exercise of the will is deserving of punishment.

On this we shall quote the valued opinion of Dr. Pritchard. "In the instance of instinctive "insanity, or insane impulse to commit acts of "violence and atrocity, to play the incendiary or "to violate the good order and decency of social "life, it is obvious that the only thing requiring "much consideration is the real existence of the "disease, and its distinction from ordinary and "real criminality. So soon as it is proved to "exist, there can be no doubt that the person "who is visited by this deplorable misfortune "ought to be effectually separated from society, "to prevent mischief to himself and others. "Whether he ought, in any case, to undergo "other punishment than this, is a question "which I do not feel disposed to discuss. As "we have seen that a struggle has often taken "place between the desire to commit any violent "act, and the conscientious feelings of the un-"fortunate person who is thus tempted, it is "probable that some have yielded to the temp-"tation, though convinced that they ought to "have resisted it. Such persons must be ad-"mitted to be morally guilty, and to deserve to

"suffer. But the calamity with which we know "them to be afflicted is already so great, that "humanity forbids our entertaining the thought "of adding to it. Perhaps all that we ought to "aim at in such a case is to secure the com- "munity against the evils to which it may be "exposed."

Notwithstanding that we have objected to the terms hitherto used to designate this form of insanity, we have none to recommend as substitutes. It is far better that things should be left unnamed, or at least, undesignated by descriptive names, than that, before their nature is thoroughly understood, they should be clothed in an ill-chosen and premature phraseology, which may mislead the enquirer or supply a vantage ground to the objector.

The form of disease under which the third class of insane homicides suffer, may be simply termed Insanity without delusion. Of late years the opinion has been gaining ground among the best psychopathists, that, with few exceptions, the embarrassment of the intellect is secondary to, and consequent upon the disorder and perversion of the emotive faculties. M. Guislain, in his recent treatise, *Leçons Orales sur les Phrenopathies*, has developed this opinion with some success. His conclusions are thus stated:

" 1st. Que dans la grande majorité des cas, " on arrive à constater dans l' aliénation un " état phrénalgique.

" 2nd. La douleur est au fond de l' immense " nombre des affections du moral.

" 3rd. *Son point de départ est dans la sensi-* " *bilité qui détermine les affections, les émotions.*

" 4th. La mélancolie est le symptôme qui " signale le plus souvent la période d' incuba- " tion et la période de début des phrénopathies " en général.

" 5th. Les causes prédisposantes, les causes " déterminant agissent avant tout sur la sensi- " bilité et non pas sur les idées."

In another place he states:

" Une émotion est au fond du plus grand " nombre des causes.

" Le cœur moral est atteint dans les pluralité " des cas.

" C' est l' émotion qu' on rencontre dans les " phénomènes extérieurs de la maladie, qu' on " découvre au fond des 9-10 des phrénopathies " vrais essentielles."

The following passage in Dr. Pritchard's chapter on Pyromania shews that this idea of the secondary nature of intellectual disturbance had presented itself to him; he does not, however, seem to have appreciated its

great importance, nor therefore to have pursued it.

"The delusion is perhaps rather consequent "on the morbid desire than the real motive "of the act, since it is more in accord with the "ordinary phenomena and history of madness, "that the active propensities to disease should "lead the understanding astray, than that a "disorder of the intellect should really be the "origin and foundation of the whole disturb-"ance which the mind sustains."

We entirely agree with M. Guislain in the importance he attaches to a disordered state of the affections in insanity; and we are convinced that when the knowledge of mental disease becomes more extended and exact, that so far from disease of the emotive faculties alone being considered a rare, and that of the intellect a common occurrence, the very reverse of this will be acknowledged to be the truth. The doctrines which now appear new and dangerous, with the lapse of a few brief years may become the trite and unquestioned opinions of the vulgar. [See Appendix, Note E.]

This discussion on insanity without delusion, may be appropriately concluded in the words of Esquirol.

"Au reste ce n' est pas le première fois que

"les medécins, plus exercèes que les autres "hommes à observer les infirmitiés humaines, "ont éclairé la justice sur les altérations de "l' esprit et du cœur de prétendus coupa- "bles.

"A la fin du quinzième siècle, Marescot, "Riolan, et Duret, chargés d' examiner Marthe "Brossier, accusée de sorcellerie, terminèrent "leur rapport par ces mots mémorables: *Nihil "à demone; multa ficta, à morbo pauca.*"

"Cette décision servit depuis de règle aux "juges qui eurent à prononcer sur le sort des "sorciers et des magiciens. Nous, nous disons, "en caractérisant le meurtre des monomani- "aques-homicides: *Nihil à crimine, nulla ficta, "à morbo tota.*"

It will be scarcely right to neglect all notice of what may be called the minor forms of insanity without delusion, leading to special criminal acts. The most serious of these, pyromania, is certainly of rare occurrence; not more than five authentic cases are on record; the most striking of these being two cases recorded by Gall. One, that of Marie Frank, who was executed for house-burning, having fired thirteen houses in five years. She was ignorant, unhappy, and intemperate; and whenever under the influence of strong drink, she experienced

what is called an "uncontrollable impulse" to commit arson.

The other is that of a quiet and inoffensive young girl, who felt the same "uncontrollable impulse" at the catamenial periods; and made seven attempts to burn houses in a village near Cologne. She was acquitted on the plea of insanity.

Jonathan Martin's case of insanity with delusion, and some others of a like nature, have been most unaccountably included by some authors, under the head of pyromania.

A special commission was ordered by the Government of Prussia to decide on the existence of this form of disease. It decided in the affirmative; but another commission in the same country recently sat upon the same question, and two years ago terminated its labours by reversing the former decision.

We have always thought pyromania an absurd refinement on Insanity without delusion. As many forms of insanity might with as much reason be invented, as there are modes of destroying property. In asylums there might be especial monomanias for breaking glass and tearing clothes, for noisy and filthy habits, and for profane discourse. If to represent these peculiarities of Insanity, we coin the words

klasmania, bromania, euromania, orcomania, &c., we shall scarcely be guilty of uttering a more base mintage, than pyromania, oinomania, and other new terms whose currency is accepted.

A diseased condition of what phrenologists call the acquisitive faculty, constitutes a form of moral insanity, technically known as cleptomania, the instances of the existence of which are numerous and well authenticated; we have ourselves not unfrequently met with it in the wards of asylums. Our experience, however, would indicate that a mild and watchful system of correction, without wounding the sensibilities of the most humane, will effect a cure, permanent or transitory, according to the state of the cerebral organ.

It is, however, probable that this form of insanity is more frequently than otherwise made use of as a somewhat doubtful shield to the honor of members of the higher classes of society, who, disregarding the dictates of prudence and of honesty, have indulged themselves in shoplifting, or any other unfashionable mode of appropriating property.

We do not hear this plea urged in extenuation of deviations from honesty on a scale whose magnitude can redeem them from vulgarity; in great railway or gambling transactions, for in-

stance. As far as punishment in this world goes, a man of position in society had better kill a fellow-creature in a duel, or seduce the wife of his bosom friend, than be detected in the attempt to steal a piece of jewellery or haberdashery, worth half-a-crown. Therefore, this plea is seldom heard of, except in delinquencies of the nature above referred to. The petty larcenies of the multitude being too numerous and unimportant to render them frequent objects of scientific discussion. The plea of insanity is not often made use of for minor crimes, because, if allowed, it might expose the offender to a far more lengthened imprisonment than the one which would be awarded to the offence of a sane man. Thus, in the case of Reynolds, tried at Bodmin, 1843, for an assault, the judge said, "If the prisoner were pronounced insane, he might be imprisoned for life, and therefore he did not think *that* finding would benefit him." On a verdict of guilty being returned, the man was sentenced to eighteen months imprisonment.

On these grounds it is that cleptomania is of little importance as a form of mental unsoundness, in relation to responsibility for criminal actions. It is, however, of much interest to the psychopathist, as furnising another

proof of the existence of insanity without delusion.

The following illustration is selected from Pritchard. A gentleman of large fortune, whose benevolence was proverbial, bore a character above all reproach, with the exception of petty thefts committed in shops. This unfortunate disposition soon became known among the shopkeepers of the town in which he lived; when he entered their shops, the well-disposed would remove the smaller articles from the counter, or would keep so strict a watch upon him, that it was almost impossible for him to exercise his diseased propensity; if however he succeeded, the article stolen was directly returned by the family, and compensation made, if demanded. For the purpose of extorting money, some heartless persons would put articles within his reach, and give him every opportunity to steal them.

We are tempted to give one more illustration touchingly told in the following lines, from the Poem by Wordsworth, called *The Two Thieves.*

"The one yet unbreeched is not three birthdays old,
"His grandsire that age more than thirty times told;
"There are ninety good seasons of foul and fair
"weather
"Between them, and both go a pilfering together.

" With chips is a carpenter strewing his floor?
" Is a cart load of turf at an old woman's door?
" Old Daniel his hand to the treasure will slide,
" And his grandson is busy at work by his side.

" The pair sally forth hand in hand, ere the sun
" Has peered o'er the beeches, their work is begun;
" And yet into whatever sin they may fall
" This child but half knows it, and that not at all.

" Neither checked by the rich nor the needy they
" roam,
" For the grey-headed sire has a daughter at home;
" Who will gladly repair all the damage that's
" done,
" And three, were it asked, would be rendered for
" one.

" Old man, whom so oft I with pity have eyed,
" I love thee, and love the sweet boy by thy side;
" Long yet may'st thou live for a teacher we see
" That lifts up the veil of our nature in thee."

The reasonable limits of an essay prevent us from entering upon an investigation of erotomania and oinomania; leading respectively to indecent or ordinary assaults. Well might Pritchard say, "there is scarcely any offence "against public decorum that has not been "frequently the result of mental disease."

A more frightful and happily a rare mani-

festation of emotional perversion is to be found in the crime called vampirism; a terrible and interesting instance of which is recorded in the eighth number of the Psychological Journal, of which, the following are the leading particulars.

Towards the close of the year 1848, the recent graves in the cemetery of Mount Parnassus, in the neighbourhood of Paris, were found to have been violated, the bodies were disinterred, and most horribly mutilated; the grave clothes were not stolen, and no motives could at first be guessed at, as likely to suggest such atrocities. In later instances however the mutilations exhibited proof that the motives of the criminal were erotic. Disgust and horror filled the minds of the public. Strenuous endeavours were made to detect the perpetrator; armed men guarded the place, spring-guns and other machines were set for some time without avail: at length the criminal was wounded by the discharge of a spring-gun, and was detected in the hospital by his wounds. He was found to be a Sergeant Bertrand, of the 74th regiment. Paris at that time being in a state of siege, he was necessarily tried before a court martial: the detail of his confession is revolting in the highest degree; he was, however, only found guilty of a misdemeanour, and sentenced

to twelve months imprisonment, and to be placed afterwards under the surveillance of the police. The opinion prevalent among the French physicians was, that the man was of unsound mind, and that his crimes were the result of a horrible variety of erotomania. The inadequacy of the punishment to the offence, does not however appear to have been due to this opinion. Had the court considered him insane, he would have been imprisoned in the Bicêtre.

The embarrassments which have arisen in courts of justice, when insanity has been pleaded, have not alone been owing to the intrinsic difficulty of deciding what is and what is not insanity. They have been multiplied and exaggerated by the forms of criminal procedure, and by the inflexibility of that doctrine which insists upon a man being held to be, either wholly responsible, or wholly irresponsible for his actions.

When insanity has been pleaded in answer to a charge of murder, upon the issue of the trial has depended whether the prisoner should be merely treated with Indian hemp by the doctors, or submitted to the Russian hemp of the ultimate executive.

No middle course was possible: if found to be insane, no distinction could be made between

the patient who, in obedience to the supposed command of the Deity, with a faith like that of Abraham, sacrificed with bleeding heart the dearest object of his affections; and the sea captain who, in a fit of drunken delirium, deliberately and ferociously hacked to pieces half of his crew. If to a judge, prejudiced against all new-fangled doctrines, and to a dozen ignorant jurymen, the plea is held to be "not proven," the horrible doom of an ignominious death must be inflicted, whether upon the malicious idiot, or the subject of delusion inciting to acts of revenge, or of suicidal monomania with self-inflicted wounds scarcely healed, or even *conceded* to the man longing for death at the hands of others.

At the trial of Oxford, the Attorney-General cited the case of Bowler. When he came to the close of it, Mr. Baron Alderson interrupted him with this observation: "Bowler, I believe, "was executed, and *very barbarous it was.*" The present Attorney-General, Sir A. Cockburn, at Mc'Naughten's trial, said: "Such "was the expression of Mr. Baron Alderson, "and *I rejoice to be able to cite it.* I reverence "the strength of feeling which could alone "have given rise to that strength of expres-"sion."

Lord Coke said: "*Ut pœna ad paucos metus* "*ad omnes perveniat;* but so it is not when a "madman is executed, but should be a misera- "ble spectacle, both against law, and of extreme "inhumanity and cruelty, and can be no ex- "ample to others."

It is the system of the English law to allow no degrees of responsibility. A criminal is either responsible, or he is irresponsible; there are but two classes, in one of which room must be made for every one who commits an offence. In nature we find no such sharply defined classification: even the exact boundary of the animal and vegetable kingdoms is not ascertained; and in the kingdom of mind, mind itself is scarcely able to conceive the gradations of power and knowledge. But nature herself must bend to the laws of man! and a dozen farmers and shopkeepers are compelled to divide the world of mind into two parts; and, on the most awful and momentous occasion, on a question of the life or death of a fellow-creature, to discern what the most scientific often fail to do, the exact position therein of a particular instance.

We are extremely happy to observe, that in Ireland the administration of the law practised with such inflexibility in England, is occasionally departed from; and, in such cases as

those of Wm. Quinlaw, L. Grady, and others, mentioned in the Inspectors' Reports, the Lord Lieutenant has sometimes commuted the sentence of death into transportation, on the ground of *imperfect* responsibility.

The following observation on this subject by H. M. Inspectors of Asylums in Ireland is deserving of the deepest attention, not only on account of the great experience of its authors, Drs. White and Nugent, but also on account of the sound principles it inculcates. Fifth Report, p. 11. "Whilst immediately on this "subject, we may be further permitted to "observe, as the result of a minute exami- "nation into the many real or simulated cases "of criminal insanity that have come under "our notice, that ultimately no greater da- "mage can be engendered to the very object "it would desire to serve, than an overstretched "morbid disposition to render lunacy the pro- "tector, as it were, of crime, and thereby to "acquit prisoners in the dock without a rigid "enquiry, and the clearest evidence of the "correctness of the plea; if there are ex- "tenuating circumstances connected with the "psychological condition of the accused, they "are legitimate subjects to be considered in "meting out the after punishment, but cer-

"tainly not in the first instance for an un-
"qualified acquittal."

In cases of murder, our law permits juries to bring in a verdict of guilty or not guilty only; and if the former, no course is open to the judge except that of passing sentence of death. Until some middle way is devised by which offenders neither altogether innocent, nor altogether guilty, can have their proper meed of correction, juries in cases of murder will continue to find verdicts of not guilty on the false plea of insanity. As the power to attemper justice with mercy is accorded to neither judge nor jury, the latter will seize the only opportunity to ensure mercy and leave justice to take care of itself.

In France, the power of returning a verdict of guilty with extenuating circumstances, in the first, second, or third degree, is permitted to the jury. This large discretionary power, vested in the hands of men so partially educated, and so little responsible for their decisions, as the ordinary members of juries are, is not unfrequently exercised in a most unsatisfactory manner.

In the case of the Friar Léotaud, tried at Toulouse, in 1848, for the murder of a young girl, after violating her, a verdict of "guilty,

with extenuating circumstances," was returned; the only assignable motive for extenuation being, the vow of chastity of the accused.

In the case of Madame Lafarge, the "ex- "tenuating circumstances," which had weight with a French jury to palliate one of the most cold-blooded and atrocious murders on record, were, the existence of an old husband and an agreeable lover.

"The judge has a kind of perpetual responsi- "bility imposed upon him; the jury is sheltered "by numbers, separates from the box, retires "into society, and is forgotten." We think, therefore, that any extension of power to juries would be unwise; but that a large discretion in awarding punishment for murder should be entrusted to our judges, whenever the accused is proved to have laboured under imbecility, or any kind or degree of mental unsoundness. The judges do possess such discretionary power in awarding punishment for other crimes; thus, for manslaughter, they sentence one criminal to one month's imprisonment, and another to transportation for life, according to the character of the offence, or the existence or not of extenuating circumstances.

We cannot here enlarge upon the kind of treatment which would be suited to the correc-

tion of criminals, whose punishment has been modified in consequence of partial unsoundness of mind. A State Asylum, under skilful and enlightened government, like the one at Dundrum, would appear essential to such an end.

In England, men who escape the punishment of heinous offences on the plea of insanity are, for the most part, consigned to the criminal ward of Bethlem; a place which has been justly referred to, as a *receptacle* of insane criminals. It is not a modern prison, for there is no corrective discipline; it is not an hospital, for suitable treatment is impossible; it is not an asylum for the relief and protection of the unfortunate, for it is one of the most gloomy abodes to be found in the metropolis. It is simply a *receptacle;* into which the waifs of criminal law are swept, out of sight and out of mind. The overflow of its numbers is farmed to the proprietor of a private asylum at Fisherton; from whose custody five of these criminal lunatics, having combined against their keepers, recently escaped in a body.

It is said that Government will permit no alteration in the criminal ward at Bethlem. We trust that this refusal arises from a conviction that the whole treatment of criminal

lunatics in England requires complete revision, and that no modification of existing arrangements can be satisfactory.

The experience of Drs. White and Nugent in the enlightened management of criminal lunatics at Dundrum, so ably stated in their sixth Report, from the 14th to the 18th page, will afford invaluable guidance to the English Government in any attempts to render the classification and management of criminal lunatics what the justice, intelligence, and humanity of the age demand that it should be. [The author treats on this subject at length in his tract *On the Classification and Management of Criminal Lunatics.* See Appendix, Note F.]

Of not less importance than some modifications of the inflexibility of English law in relation to entire responsibility, or irresponsibility, is the necessity of discovering some more fitting tribunal to decide upon the delicate question of insanity, than that rough instrument of justice, a common jury. Various suggestions have been made to effect this purpose; than which none appear more practical and less objectionable than the French system of employing "experts." "These are persons ap-"pointed in the course of judicial proceedings, "either by the court, or by the agreement of

"the parties, to make enquiry under oath in "reference to certain facts, and to report "thereon to the court. They are not examin- "ed as witnesses, nor have they any power "of deciding the cause, like arbitrators; their "functions are more analogous to those of a "Master in Chancery according to our own "laws."—(Ray, p. 55.)

In reference to doubtful cases of insanity, their duties would perhaps approximate more closely to those fulfilled in our own Admiralty Court by the Masters of the Trinity Company. In intricate questions of collision, salvage, and cases of that nature, these experienced mariners are summoned to aid the court, as *amici curiæ*. They are not witnesses either for plantiff or defendant, and their position is consequently an impartial one. Their opinions have the greatest weight, and are readily deferred to, both in the court and in the maritime community.

If the Commissioners or Inspectors in Lunacy, or any other experienced and impartial men, could be called upon to assist the court where insanity was pleaded, as *amici curiæ*, the anomalies and uncertainties of the law on this subject would be in a fair way of amendment.

It has always appeared to us, that the witness box is no proper place for the psychopathic

physician in these cases; and that the very fact of his being called either "for the crown," or "for the defence," renders it impossible for him to hold an impartial position: that if his cross-examination is often damaging to his own character for exactitude in scientific knowledge, it is not less damaging to that of the court itself, as an institution whose purpose is to elicit truth and administer justice.

The importance of an independent and impartial position from which to announce a skilled opinion was well illustrated in Mc'Naughten's trial. After the evidence of Sir A. Morrison, Dr. Monro, and several other physicians of special experience, had been given, Mr. Aston Key, surgeon to Guy's Hospital, and Dr. Forbes Winslow, neither of whom had been summoned on either side, gave their testimony in favour of the insanity of the prisoner. Chief Justice Tindal then said: "We feel the evidence, "*especially that of the two last medical gentlemen* "*who have been examined, and who are strangers* "*to both sides*, to be very strong, and sufficient "to induce my learned brother and myself to "stop the case."

The opinion of the psychopathic expert, acting as *amicus curiæ*, would in all cases have the weight of the above gentlemen, who *were*

strangers to both sides. Such opinion, founded upon a thorough examination of each particular case, would carry conviction with it, and neutralize the sophistries of the bar, the prejudices of the bench, and the ignorance of the jury box.

Another modification of criminal law procedure, which can scarcely be much longer denied to the English public, and which cannot fail to increase the probability of justice being administered in difficult and balancing cases, is the appointment of public prosecutors. The appointment of these officials would, not only add dignity and impartiality to the prosecution, but to that of the defence also; for the *animus* of the latter is naturally affected by that of the former, and the influence of the responsible public officer would extend itself to both sides of the question.

With these modifications of legal procedure; with an enlarged discretionary power in the hands of the judges, in the awarding of punishment where responsibility is modified by partial insanity; and, above all, with the total abolition of all arbitrary tests of insanity, founded upon metaphysical subtilties; and a recognition of insanity, as a disease manifesting itself by a somewhat variable group of symptoms; we

anticipate that the difficulties which have embarrassed this question will disappear, and that the administration of justice, attempered with mercy, will no longer remain either impracticable or uncertain.

APPENDIX.

Note A., Page 27.

The following, quoted from a leader in the *Times* Newspaper of the 22nd of July last, expresses similar opinions with characteristic vigour.

"Nothing can be more slightly defined than the line of demarcation between sanity and insanity. Physicians and lawyers have vexed themselves with attempts at definition in a case where definition is impossible. There has never yet been given to the world anything in the shape of a formula upon this subject, which may not be torn to shreds in five minutes by any ordinary logician. Make the definition too narrow, it becomes meaningless; make it too wide, the whole human race are involved in the drag-net. In strictness, we are all mad when we give way to passion, to prejudice, to vice, to vanity; but if all the passionate, prejudiced, vicious, and vain people in this world are to be locked up as lunatics, who is to keep the key of the asylum? As was very fairly observed, however, by a learned Baron of the Exchequer, when he was pressed by this argument, if we are all mad, being all madmen, we must do the best we can under such untoward circumstances. There must be a kind of rough understanding as to the forms of lunacy which can't be tolerated. We will not

interfere with the spendthrift, who is flinging his patrimony away upon swindlers, harlots, and blacklegs, until he has denuded himself of his possessions and incurred debt. We have nothing to say to his brother madman, the miser, who pinches his belly to swell the balance at his banker's—being 73 years of age, and without family,—but, if he refuse to pay taxes, society will not accept his monomania as pleadable in bar."

Note B., Page 30.

That delightful new work "*Psychological Enquiries*," which might be truly called "Psychological Recreations," or "Philosophy made charming," contains some observations which we shall take the liberty to quote, as they support our own views on this subject. The learned author puts them into the mouth of Crites, who is supposed to represent a distinguished member of the bench.

"Crites. All this is to me a matter of curious speculation; but it leads to another subject, in which I feel a still greater interest; partly because, from the special nature of my pursuits, it is sometimes forced on my attention, and partly because out of it arise questions, which, as they effect our social system, are of great practical importance to us all. Some writers have described, under the name of Moral or Instinctive Insanity, a state of mind in which they say that there are no illusions, nor any affection of the intellect; but in which there is simply a perversion of the moral sentiments; the individual labouring under an impulse to perform certain extravagant and outrageous acts, injurious to himself or others; such impulse being irresistible, so that he is to

be held as being no more responsible for his conduct than an ordinary lunatic. Now I own that, looking at the question merely as one who has some knowledge of human nature, and with no other aid than that of my own common sense, I am very much inclined to doubt the correctness of this doctrine, and I am certain that it is dangerous to admit the plea of irresponsibility for those who labor under this so-called moral insanity, to the extent to which Dr. Pritchard and others have claimed it for them. Observe, that I use the term Moral Insanity not as comprehending cases in which there is a belief in things that do not exist in reality, or cases of idiotcy, or those approaching to idiotcy; but limiting it strictly and exclusively to the definition given by writers on the subject. The law makes a reasonable allowance for the subsiding of passion suddenly provoked. But we are not, therefore, to presume, that the same allowance is to be made for those in whom a propensity to set fire to their neighbours' houses, or commit murder, is continued for months, or weeks, or even for hours. Is it true that such persons are really so regardless of the ill-consequences which may arise, so incapable of the fear of punishment, and so absolutely without the power of self-restraint, as they have sometimes been represented to be? If not, there is an end of their want of responsibility. Let me refer here to the instance of the gouty patient some time since adduced by Ergates. Under the influence of his disease every impression made upon his nervous system is attended with uneasy sensations. If such a person has exerted himself to acquire the habit of self-control, the evil ends with himself; but otherwise he is fractious and peevish, flies into a passion, without any adequate cause, with those around him, and uses harsh words which the occasion does not justify: conduct of which he can offer to himself no explanation, except that he cannot help it; and for which, if he be a right-minded person, he is sorry afterwards. If he were to yield to the impulse of his temper so far as to inflict on

another a severe bodily injury, ought it to be admitted as an excuse, that Dr. Garrod had examined his blood, and found in it too large a proportion of lithic acid? Yet when Oxford yielded to what was probably a less violent impulse, which caused him to endeavor to take away the life of the Queen, the jury acquitted him, on the ground of being the subject of "moral insanity." It seems to me, that juries have not unfrequently been misled by the refinements of medical witnesses, who, having adopted the theory of a purely moral insanity, have applied that term to cases to which the term insanity ought not to be applied at all. It is true, that the difference in the character of individuals may frequently be traced to differences in their organisations, and to different conditions as to bodily health; and that, therefore, one person has more, and another has less difficulty in controlling his temper, and regulating his conduct. But we have all our duties to perform, and one of the most important of these is, that we should strive against whatever evil tendency there may be in us, arising out of our physical constitution. Even if we admit, (which I do not admit in reality,) that the impulse which led Oxford to the commission of his crime, was at the time irresistible, still the question remains, whether, when the notion of it first haunted him, he might not have kept it under his control; and thus prevented himself from passing into that state of mind which was beyond his control afterwards. If I have been rightly informed, Oxford himself was of this opinion; as he said when another attempt had been made to take away the life of the Queen, "that if he himself had been hanged, this would not have happened." We have been told of a very eminent person, who had acquired the habit of touching every post that he met with in his walks, so that at last it seemed to be a part of his nature to do so; and that if he found that he had inadvertently passed by a post without touching it, he would actually retrace his steps for the purpose. I knew a gentleman who

was accustomed to mutter certain words to himself (and they were always the same words), even in the midst of company. He died at the age of ninety, and I believe that he had uttered those words for fifty or sixty years. These were foolish habits; but they might have been mischievous. To correct them at last would have been a very arduous undertaking. But might not this have been easily done in the beginning? and if so,—if instead of touching posts, or muttering unmeaning words, these individuals had been addicted to stealing or stabbing,—ought they to have been considered as absolved from all responsibility?

"It has been observed by a physician, who has had large opportunities of experience in these matters, that 'A man may allow his imagination to dwell on an idea, until it acquires an unhealthy ascendancy over his intellect.'—(*Anatomy of Suicide*, by FORBES WINSLOW, M.D.) And surely, if, under such circumstances, he were to commit a murder, he ought to be held as a murderer, and would have no more 'claim to be excused than a man who has voluntarily associated with thieves and murderers until he had lost all sense of right and wrong; and much less than one who has had the misfortune of being born and bred among such malefactors."

"There are many dogs whose natural and original instinct leads them to run after and kill sheep; but a proper discipline teaches them that they are not to do so, and counteracts the instinct. There are, undoubtedly, instances without number of illusions, which not only have a fiercer hold on the mind than the instinct of dogs, but which neither argument nor discipline can remove or even control: but it is not so as to others; and surely there is no reason why those of the latter class should not be overruled by means analagous."

We entirely concur with these opinions, only doubting the propriety of allowing exaggerated mental habit, without cerebral disease, to be con-

sidered one form of insanity. We think it as different from real insanity, as an uneven gait, caused by an awkward habit of walking, is to lameness from ulceration of the hip-joint. People may agree to call things which are radically different by the same name; but they cannot reasonably treat them in the same manner, or claim for them the same immunities.

Corrective discipline may cure, and often does cure vicious habits of the mind, however strange and monstrous their development; and the fear of such discipline, moreover, may prevent the indulgence of such habits. But punishment is not corrective, and is scarcely even revengeful when applied to the real madman. He may address his judge in the words of Imogen—

"I beseech you, Sir
"Harm not yourself with your vexation.
"I'm senseless of your wrath: A touch more rare
"Subdues all griefs, all fears."

We do not think the inferences from Dr. Garrod's discovery either exact or appropriate. Lithic acid in the blood may unhinge the temper, and inflame the joints. Tennyson tells us that Sir Edward Head was

"Vexed with a morbid devil in his blood,
"Which veiled the world with jaundice.

But the inference he draws teaches compassion even for frailties.

"What know we of the secret of a man?
"His nerves were wrong. What ails us, who are sound,

"That we should mimic this raw fool, the world,
"Which chalks us all in its coarse blacks and whites,
"As ruthless as a baby with a worm?"

The illustration, however, is beside the question at issue; for a poison in the blood would destroy responsibility for crime, if it was strong enough to cause the crime. Crites would scarcely hang a man who had committed a homicide in the delirium caused by the poison of typhus fever.

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Note C, page 75.

Hallucination is no index of insanity, unless the patient believes in its reality. Nicolai, the Berlin bookseller, and many others, have recognized the strongest and most vivid hallucinations for what they were, and have escaped even the suspicion of insanity. On the other hand patients, convalescent from insanity, sometimes remain subject to hallucinations of sense: they know them to be errors of sense, and they cease to be the groundwork of delusions.

A very able *Lecture of M. Baillarger's*, reported in No. 6 of the *Asylum Journal*, contains some excellent remarks on this curious point. He says—

"It is not rare, when an insane patient recovers, to see him retain a remnant of his disease; thus, we have at this moment, a very curious example of the kind. A woman who was completely insane for seven or eight months, some years ago, but

who now fills a situation of considerable difficulty in this establishment, with great ability, nevertheless retains a very grave symptom of her former malady. She remains subject to hallucinations of hearing, but at the same time accounts to herself perfectly for the phenomena she experiences. This causes me to say that, though neither insane nor alienated, she nevertheless retains an important lesion of the intelligence.

"When insane, she was not conscious that her understanding was diseased, she did not account to herself respecting the mistakes of her condition, she did not notice them, or she believed them to be realities; in a word, she was deceived by her disease.

"The change that has taken place is, that she now judges altogether differently; she thinks of her actual hallucinations, in the same way as the physician does, she judges and knows them as sensations without objects, in a word, the patient knows that she has a nervous disease, and consequently she is no longer insane. I have recently read the account of a voyage, in which the author, not thinking, perhaps, of defining insanity by its strongest pathognomic character, says, 'madness is a misfortune which ignores itself;' nothing can be more true.

"Insanity has two distinct elements: first, the lesion of the intelligence; and then, the loss of the consciousness of that lesion, or the impotence of the will. I need scarcely tell you, which of these two is the most important to the physician,—it is the lesion; for when you have cured that, you have almost cured your patient.

"The same may be said of hallucination; for, after having been for a greater or less length of time recognised by the subject as an error of the senses, it terminates by vanquishing the reason, and destroying the consciousness. Here also, if you can cure the hallucination, you may hope that the conscience and the reason will return to their integrity.

"But the lesion of the intelligence is not the most important

element for the magistrate; for him, the question is the loss of the conscience, or of the power of self-control. It is, indeed, the failure of the free agency, or of the responsibility, that places the insane under a different jurisdiction than that which governs the sane.

"The questions for the magistrate and for the physician are then very different; but these two create a general point of view, which should at least be kept in sight in giving a veritable definition of insanity."

Note D., Page 84.

At the recent trial of Anne Brough at Guildford, August 9, 1854, for the murder of her six children, the horrible details of whose crime must be fresh in the recollection of our readers, Mr. Justice Erle in summing up said, "That the evidence for the prisoner appeared to be founded upon the supposition, that the crime had been committed under the influence of some *uncontrollable impulse*, and he would only observe, that this was a most dangerous doctrine, for undoubtedly every crime was committed under some impulse, and the object of the law was to control impulses of that description, and thus prevent crime."

Dr. Forbes Winslow, however, had not made use of the exact words *uncontrollable impulse*. What he had said was, "I have known many instances where a person has made an attack upon a near

relative, with whom he had previously been on the most affectionate terms, and it frequently occurs with mothers and children. In such cases the patient suffers under a strong *homicidal impulse which he cannot control.* And it has happened to me to hear a patient bitterly lament being under the influence of such an impulse."

This trial appears to have been conducted in a calm and temperate spirit, very unlike that in which its result has since been commented upon in the newspapers: it is seldom, indeed, that medical evidence has been more judiciously set before a jury.

Mr. Izod, a surgeon who had attended the prisoner professionally for several years, deposed, that in 1852, after childbirth, she had paralysis (*hemiplegia*) with loss of speech and distortion of the face. That she had never entirely regained her powers, and that he had observed symptoms of disordered brain. Dr. Forbes Winslow said that "paralysis may exist in some cases without actual insanity, but it is always symptomatic of a disease of the brain. Bleeding at the nose is a symptom of congestion of the brain, and is considered as an effort of the brain to relieve itself. During my interview with the prisoner in the gaol, I did not observe any symptom of insanity. Cases of temporary insanity resulting in a desire to commit murder or suicide are very common." (In re-examination.) "I am

of opinion that at this moment the prisoner is suffering from disease of the brain."

Against this strong evidence the circumstances immediately preceding the crime were to be weighed.

The prisoner, a married woman with a large family, and bearing a respectable character in her village, had been in the habit of meeting a paramour in London, and frequenting houses of ill fame with him. She indulged her habits of depravity with an amount of secrecy and caution more characteristic of a criminal than of a lunatic. She was detected, renounced, and left by her husband, and in an agony of despair and vindictiveness, she committed one of the most horrible domestic massacres on record. We advisedly say vindictiveness, for she left a letter addressed to a daughter, who was from home, stamped with this feeling. It was attached to a box of plate and jewellery, and ran thus: "All for my daughter Mary. Her father is only seeking to get money from them as never injured him, or done him any harm; so help me God. Mary Anne Brough." A more atrocious or vindictive libel, or one more calculated to poison the mind of the only child she could not reach, against her father, could scarcely be conceived: yet strangely enough the import of this letter seems to have been overlooked both at the trial and in subsequent comments.

The spirit of these comments deserves some

notice. They prove that the real question at issue, namely, the existence or not of insanity, is liable to be overlooked in an angry squabble between those who maintain the necessity of capital punishments and those who desire to abolish them. Some journalists, in their anger that Mrs. Brough had escaped hanging, have visited the medical witnesses with severe censure for giving evidence which could not be controverted. Others have recriminated, that those who object to the verdict, "wanted more blood, and thought the gallows an outraged institution," &c. We are sorry to believe it, but we are convinced, that a large number of the humane and excellent men who object to capital punishment, had far rather see a great criminal escape from justice altogether, than that he should undergo capital punishment. The feeling against capital punishment is spreading among the class of men from which common juries are taken; and sooner or later the executive will be compelled to devise the means of inflicting severe secondary punishment. We entertain the strongest conviction, that had the jury been able to find Mrs. Brough guilty with extenuating circumstances, so as to escape capital punishment, but to ensure the infliction of perpetual imprisonment, they would have found that verdict. As it is, the punishment of perpetual imprisonment will be ensured by the legal fiction that she is insane, and to be confined for that reason during Her Majesty's pleasure.

Note E, page 105.

The author cited in our text appears to have missed the true emotional theory of insanity, from his gloomy views respecting the present condition of man. According to him, insanity is caused by grief or mental pain alone. There can, however, be no doubt that emotions which in moderation are pleasurable, become in excess the sources of insanity. Pope was nearer the truth when he wrote,

"Love, hope, and joy, fair pleasure's smiling train;
"Hate, fear, and grief, the family of pain;
"These, mixt with art, and to due bounds confined,
"Make and maintain the balance of the mind:
"The lights and shades, whose well accorded strife
"Gives all the strength and colour to our life.

"These 'tis enough to temper and employ;
"But what composes man, can man destroy."

The author believes that, in his articles in the *British and Foreign Review*, he has been the first to propound the emotional theory of insanity on a broad and satisfactory basis. His views will be sufficiently understood from the following extracts.

After quoting from Sir Jas. Mackintosh's Ethics, to prove that a being capable of reason alone could never act; that in the sane mind the springs of action are always to be found in emotion; he proceeds:

If our reasoning faculties, when in a sound and healthy condition, cannot conduct to action, still less will they be capable of doing so when they are enfeebled by disease.

"All medical men of experience acknowledge the occasional existence of mental disease without disorder of the intellectual faculties. The problem now claiming attention is a more advanced and extensive one: namely, whether, with certain admitted and well marked exceptions, insanity does not invariably commence with and consist in emotional disturbance. The exceptions include those cases which by some writers are designated Symptomatic Insanity, and arise from recognised physical causes: from drunkenness, gout, fever, phrenitis, apoplexy, epilepsy, blows on the head, insolation, parturition, old age, etc. We believe that, except in these cases, convincing arguments can be adduced to prove that *insanity is always in the first instance emotional*; that intellectual disturbance is always secondary; and that Dr. Pritchard's cases were apparently emotional, because in them the secondary part of the disease did not occur, from the unusual force of a conservative tendency in the intellectual faculties. Any hesitation we may feel in adopting this theory arises, not from any deficiency of argumentative proof, but because in reconciling so many inconsistencies and in smoothing so many difficulties, it appears to favour the dominion of that idol of the tribe which leads us to expect and to require an amount of uniformity which does not exist in the operations of nature.

"The pathological argument rests upon the facts well known to physicians, that the causes of insanity are of a nature producing in the first-place emotional changes only, either by the sudden and violent agitation of the passions,

'When all the heartstrings like wild horses pull
The heart asunder,'

or by the long-continued influence of circumstances operating more insidiously upon the mind, and producing an habitual state of abnormal feeling.

"A man was never yet either reasoned into insanity, or reasoned out of it. The delusion-test may with propriety be upheld by our judges, highly intellectual as they are and full of dialectic power; but should the test of insanity ever become a part of statute law, it is inconceivable that the large experience of our Houses of Parliament will permit them to allow it to rest upon any kind or amount of bad reasoning.

"The larger portion of the treatment of insanity consists in what is emphatically denominated moral treatment, in restoring the equipoise of the emotions, in repressing the monster passion which swallows up the rest, and in renewing the activity and vigour of the little passions which have been thus unceremoniously dealt with.

"No sane man would attempt to reason away the erroneous opinions of the insane; even lunatics of asylum experience come to recognise the hopeless nature of such a task, and respect the delusions of others, although they may be antagonistic to their own.

"In the prodromic period of the disorder the emotions are always perverted, while the reason remains intact. In the period of convalescence, the return of correct judgments is an uncertain and fallacious indication of cure, so long as the emotions remain, even in a slight degree, perverted from their normal condition; but immediately the latter are put straight, the cure may be considered complete. Lastly, and chiefly, with the exceptions above indicated, there is no description of insanity which, if traced to its source, will not be found either to consist in perverted emotion, or to emanate from that origin. Such will the causes of insanity ever be found by those who diligently investigate them, although by secondary disorders of the intellectual faculties its symptoms may, and usually do become so transformed and disguised, that its essential nature is subsequently not easy of recognition.

"For aught we know to the contrary, injuries to the head, poisoned blood, and other similar causes, are capable of pro-

ducing insanity in any human being; but moral causes, on the contrary, appear to be efficient only when the mind is in a condition favourable to the reception of the morbid influence. When this predisposing condition exists, trivial causes become influential and effective; when it does not exist, men have for lengthened periods been subjected to every kind, degree, and combination of mental suffering, without lapsing from the healthy states of vigorous resistance or of patient endurance. The nature of this predisposing condition appears to consist in abnormal motivity or impressibility of some emotion or set of emotions, combined with a weak and deficient power of will. Too much weight cannot be attached to the recognition of this state of mind, with the view either to the prevention of insanity by a properly adapted education, or with a view to its prodromic treatment.

"The ever-changing, increasing, and indefinite operation of causes producing insanity, is also a strong reason for supposing that their power is exerted upon the emotional part of man's nature. Whatever operates upon the reason produces a definite effect. The intellect cannot refuse either assent or dissent, qualified or entire, to any and every argument or theorem propounded to it. The dialectic function is impassive as machinery, and there is little doubt, if it were possible to submit the premises, that logical engines could be constructed as efficient in their work as Mr. Babbage's celebrated calculating machine, or Mr. Clarke's ingenious instrument for grinding Latin hexameters. The logical engine which every man possesses often does its work badly enough, but whatever the results may be, they are definite and precise.

"The intellectual faculty forms an opinion, general or particular—erroneous or correct—there it stops; and according to the materials submitted, the quantity and quality of the work done, a man becomes full or empty, stupid or wise, a dolt or a Newton. A man may be an idiot from congenital deficiency of this faculty, or may become demented from decay

of it; he may be crotchety from its imperfection, *but it appears to us impossible that any condition of the reasoning faculty can produce madness.*"

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Note F., Page 120.

The author does not disagree with other superintendents of asylums in thinking that a state asylum is unnecessary, or that county asylums do not contain inmates for whose detention such an institution is desirable. He only attempts to shew that it is generally a matter of accident whether an insane person becomes a so-called criminal lunatic or not; and that a special institution is not needed for the class of criminal lunatics, which includes perhaps an average proportion of patients whose habits are quiet and inoffensive, and whose dispositions are gentle: but that it is necessary for those lunatics who are cursed with *criminal dispositions*, whether they have committed overt acts or not. He says,

"The formation of a central asylum for criminal lunatics might be decided and acted upon without further difficulty than the expenditure of a certain sum of public money, and this investment could even be made a source of economy. But if, for the sake of present expediency, the question is thus solved, the real difficulties will be left untouched. Harmless patients will be taken from the places of appropriate treatment where they now are, and perplexing ones of criminal character will be left behind. If all lunatics confined under powers

given by 39 & 40 Geo. III. cap. 94; 1 & 2 Vict. cap. 14; and 3 & 4 Vict. cap. 54, are classed as criminal lunatics, and are placed in the same establishment, and under the same system, the difficulties of classification and management, which have been felt in some asylums, will only be removed from one place to another, and will be greatly increased by the greater number of incongruous elements. Those who have become insane from the long indulgence of criminal propensities, will be confounded with those who have become criminal for want of timely protection during their insanity; those in whom some degree of imbecility renders a vicious character still more intractable, with those who have done wrong conscientiously believing it to be right; those accused of some slight offence for which they have never been tried, with those convicted of heinous offences, and after conviction become insane."

"It will appear, from cases cited, how purely accidental it is whether an insane person is admitted into an asylum under a state warrant, or under the ordinary justices' order, and how arbitrary is the present classification of so-called criminal lunatics. There are few insane persons who, if left at large and neglected, would not be liable to commit offences of some kind against the law: and a large number of patients admitted into asylums under the ordinary forms have committed offences which would have subjected them to imprisonment and trial had not their mental infirmity been obvious. When the invasion of the disease is sudden and pronounced, its nature is not likely to be overlooked, and the subject of it is sent at once to a proper place for treatment. But if the disease comes on, as it frequently does, in a gradual and insidious manner, it may lead to the commission of offences before it is observed, and the visiting justices of the gaol, or the jury impanelled to try the prisoner, may be the first to recognise its existence. When persons known to be insane commit offences, they are not usually sent to gaol, but direct to the asylum, under the common admission forms,—a general but not a universal exception

being made in cases of homicide. It therefore appears to depend more upon the manner in which insanity develops itself, and upon the persons who first appreciate its nature, than upon any distinctive kind of the malady, whether a patient happens to be classed as a criminal or as an ordinary lunatic. Patients previously confined as criminal lunatics are sometimes re-admitted as ordinary patients, and the latter after discharge are sometimes re-admitted as criminal lunatics. So long as the distinction between criminal and other lunatics leads to the same treatment, no inconvenience arises from its being dependent upon contingencies of this kind; but if different establishments and management are provided for the two classes, some more rational and certain system of classification than the present one will be required.

"It should not be forgotten, that there is a distinction between vice and crime; and that the removal from county asylums of all lunatics who have committed offences against the law would still leave behind the depraved and vicious persons, whose society is more contaminating than that of the violent and thievish. Drunkenness and debauchery are not crimes, and those who have become insane after a life spent in their excesses could not be dismissed from a public asylum as criminal lunatics; yet I have seen infinitely more mischief produced by the example and contagion of the latter than of the former. When a wretched and debased prostitute is admitted into the wards of an asylum, suffering from maniacal excitement, the unblushing profligacy of her language and conduct is often such as to shock the least fastidious: when she has passed into a quieter state, or is progressing towards recovery, her behaviour and the tone of her conversation become less offensive, because more guarded towards the officers; but are more insidious and therefore perhaps still more mischievous to the pure-minded and innocent women with whom she is necessarily associated. Who would not prefer for a young woman even the society of those who, under the influence of mental

disease, had committed what are called heinous offences, to that of the miserable beings referred to? Among the male patients also are to be found those who have spent their years in vice and debauchery, but who have never been detected in crime. The meshes of the law do not catch all the scoundrels in society, but they are all liable to become insane. Vice is probably more infectious and polluting than crime; and while the latter is often the result of insanity, the former is very frequently the cause of it. My experience leads me to believe that vicious and depraved inmates of lunatic asylums are more objectionable as companions to the other patients than the so-called criminal lunatics."

"In the management of lunatics a large number can, by wise and kind treatment, be influenced through the operation of their higher moral feelings; but unfortunately there are others whose character has been fixed in a baser mould, and who must be influenced by more direct appeals to their selfishness. This influence cannot conveniently be exercised in a place where a mild and indulgent regime is established, and hence the demand and necessity for a separate asylum for *lunatics of criminal disposition.* These persons cannot with justice or expediency be treated like sane criminals. They cannot, even for heinous offences, be hung out of the way, for public feeling would revolt at it. Long-continued solitary confinement would increase their mental infirmity, and would deteriorate rather than improve their condition. For the same reason they cannot be worked or transported in company with other criminals, to whom they would be most mischievous companions; for an imbecile or insane man is the worst comrade a vicious one can have, becoming a butt, a disguise, and a ready tool.

"By exclusion from criminals and from lunatics the mixed character needs a place of treatment distinct from the asylum and the prison, and partaking of the characteristics of both; with more variety, leniency, and indulgence than are to be

found in the latter; with a stricter discipline and a compulsory industry unsuited to the former."

"It may be said that this distinction of all offenders against the laws into CRIMINALS, LUNATICS OF CRIMINAL DISPOSITION, and LUNATICS, will not be easy to carry into practice, because there will be some persons on each side of the intermediate class whose proper position it will be difficult to decide. To this objection it may be answered, that at present there are only two classes instead of three; that while, in nature, all changes are gradual, human classification must ever be more or less imperfect. Besides, it is to be hoped, that the system of treatment adopted for the middle class would not be formal and arbitrary like prison discipline, but would be made to accommodate itself to many different phases of character, and degrees of insanity or vice; would be a wholesome and reformatory discipline, sufficiently disagreeable in its operation on the vicious man, but not hateful or oppressive to the insane."

"Some alteration is desirable in the present practice of detaining in gaol supposed lunatics, who have committed serious offences, to await trial at the next ensuing assizes, which may take place after such a brief interval that it becomes impossible to ascertain the mental condition of the prisoner; and the evidence on this point being imperfect, the verdict is a matter of chance. The very insufficient opportunities afforded to medical witnesses to form an opinion of the mental condition of a prisoner, must often have struck the most casual observer. Generally, the physician giving evidence can at most say, that he has paid two or three visits to the accused, and conversed with him in his cell in prison; sometimes he can only say that he has observed the demeanour of the prisoner in court, and has heard the evidence of other witnesses, from which he forms his opinion. In cases of concealed delusions, or of disease affecting the propensities, no medical man ought to give an opinion on such shallow grounds. I am not ashamed to acknowledge that I have often observed patients daily for

several weeks without being able to detect existing delusion. The plan adopted in France of sending a supposed lunatic to an asylum, for observation before trial, meets this difficulty, and deserves imitation."

"It may occur that the Court of Assize will not sit until six months after the committal, and if the mental disease is of a recent and curable nature, a most cruel injustice may be exercised towards an innocent person, by withholding seasonable treatment, and rendering a curable case of insanity incurable. Dr. Thurnam proves that treatment delayed from the third month to the twelfth month, reduces the probability of cure from one in three, to four in one; that is, there is one chance of cure left instead of twelve. Treatment delayed from the commencement of the disease to the sixth month, the interval being spent in prison, is likely to be fully as disadvantageous. In the new gaols for separate confinement a noisy lunatic proves such a nuisance, from the reverberation of his cries through the resonant structure of the building, that every effort is sure to be made to have him transmitted to an asylum without delay; but this evil is not felt in the old prisons, nor in the new ones with a silent or melancholic patient."—(*On the Classification and Management of Criminal Lunatics*, by Dr. Bucknill. London: Churchill, 1851.)

We have been much pleased to observe, from their two last Annual Reports, that the Commissioners in Lunacy now entertain opinions on this subject similar to those which have been warmly urged by ourselves. In their Report, published last year, the Commissioners state—

"In considering the subject in all its bearings, it is obvious that there exist certain difficulties which prevent our drawing a strict line, within which all such patients (and such patients only) as are unfit to associate with the ordinary inmates of

Lunatic Asylums shall be comprehended. In the first instance, those persons who have been acquitted on the ground of having been insane at the time of committing the offence, are to be distinguished from those who were sane at such time, and have become subsequently insane. Secondly, the persons who have committed *minor* are to be distinguished from such as have committed heinous offences. Whilst persons who have been committed for want of sureties, may in some cases, and others who have been summarily convicted for vagrancy, may, perhaps in all cases, be excluded altogether when the question of association is considered.

"It is clear, moreover, that a patient of decidedly homicidal tendency, or one who has perpetrated or attempted some heinous offence, and has only been saved from the category of criminals by the prudence of his friends, who have placed him in the security of an asylum before he came under the cognizance of the law, may often be an associate equally objectionable as any of those who come under the denomination of 'Criminal Lunatics.'"

In their Report for the present year, the views of the Commissioners have approximated still more closely to those advocated in the pamphlet above quoted. They state—

"The question of sanity or insanity ought, as we conceive, to be tried and determined by a competent tribunal, at the earliest period after the commission of the offence charged.

"With this view we would suggest that persons charged before justices with indictable offences, and then found on due enquiry to have been insane at the time of the offence, should, excepting perhaps in certain atrocious cases, as of high treason or homicidal violence, not be committed for trial, but should be dealt with either as lunatics not under proper care and control, or otherwise, according to circumstances.

"As respects the insane generally, it is important to ob-

serve, that a large number, if they had opportunity, would commit murder or other heinous crimes; and that in fact many of them, before they are sent as insane patients to asylums, have committed acts for which they might, but for the merciful consideration of those who dealt with them, have been brought within the provisions of the Criminal Lunatics' Acts. *Their being treated not as criminals, but as merely insane, is in many cases matter of accident.* No real distinction in such cases exists between criminal lunatics and ordinary lunatics, inmates of asylums, afflicted with homicidal mania, or other dangerous or criminal propensities."

We must acknowledge that it is a subject of no little gratification to us that the Commissioners in Lunacy have so entirely adopted our views respecting the *accidental* nature of so called Criminal Lunacy, and the necessity of special means for the care of homicidal and other lunatics of criminal disposition, who have not "come under the cognizance of the Law."

They also agree with us in vindicating the necessity of some radical change in the forms of legal procedure where insanity is pleaded, and in recommending that this change should be effected by extending the powers of the Court, and not those of the jury. They state in their Report, recently issued,

"If, upon the occasion of the trial of an indictment, the plea of Insanity be set up, we are disposed to think that the question should be tried and determined by the Court after taking medical and other evidence, and not by the common jury empanelled to try the facts."

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